

Exhibit 70:

Dr. Darrel Turner Deposition Transcript



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Transcript of the Testimony of
Darrel Turner

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Case: John Does A, B, et al v. Gretchen Whitmer, et al

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Darrel Turner

6/7/2023

FIRM #8093

<p>UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION</p> <p>JOHN DOES A, B, C, D, E, F, G, H, MARY DOE and MARY ROE, on behalf of themselves and all others similarly situated, Plaintiffs, vs. No. 2:22-cv-10209 GRETCHEN WHITMER, Governor of the State of Michigan, and COL. JOSEPH GASPER, Director of Michigan State Police, in their official capacities, Defendants.</p> <hr/> <p>DEPOSITION VIA ZOOM OF DARREL B. TURNER, Ph.D. Lake Charles, Louisiana June 7, 2023 10:07 a.m.</p> <p>Page 1</p>	<p>1 2 APPEARANCES: 3 FOR PLAINTIFFS: 4 UNIVERSITY OF MICHIGAN LAW SCHOOL By: Paul D. Reingold (P27594) 5 802 Legal Research Building 801 Monroe Street 6 Ann Arbor, Michigan 48109-1215 (734) 355-0319 E-mail: pdr@umich.edu 7 8 FOR DEFENDANTS: 9 10 ATTORNEY GENERAL'S OFFICE By: Eric M. Jamison (P75721) 525 West Ottawa Street 11 Lansing, Michigan 48933 (517) 335-7573 E-mail: jamisone@michigan.gov 12 13 Also Present: Dayja Tillman, ACLU Jesse Lin, ACLU 14 Lt. Aimee Brimacombe - Client Representative for Michigan State 15 Police 16 17 18 REPORTER: Robin Dambrook, CSR-2508, RPR 19 20 21 22 23 24 25</p> <p>Page 2</p>
<p>1 2 TABLE OF CONTENTS 3 4 WITNESS: DARREL B. TURNER, Ph.D. 5 6 BY MR. REINGOLD: Page 7 Cross Examination 6 8 9 BY MR. JAMISON: 10 Direct Examination 169 11 12 --- 13 Exhibits Identified 14 1 - Curriculum Vitae 9 15 2 - Case List 53 16 3 - Static-99R Tally Sheets 94 17 4 - Dr. Turner's Report 72 18 5 - Bureau of Justice Statistics Special 19 Report 152 20 6 - Analysis of Patterns of Denial on Males Accused of Sexual Offending 124 21 7 - Alper and Durose Recidivism of Sex Offenders Released from State Prison: A 9-Year Follow-Up 135 22 23 24 25</p> <p>Page 3</p>	<p>1 June 7, 2023 2 Lakes Charles, Louisiana 3 --- 4 COURT REPORTER: I am not in the same 5 location as the witness and this deposition is being 6 conducted remotely. Is there any objection to my 7 administering the oath remotely? 8 MR. REINGOLD: No. 9 MR. JAMISON: No objection. 10 --- 11 DARREL B. TURNER, Ph.D., 12 Witness herein, having been first duly sworn to 13 testify the truth, the whole truth and nothing 14 but the truth, was examined and testified as 15 follows: 16 --- 17 MR. REINGOLD: I think we are 18 underway. My name is Paul Reingold. I'm a 19 Cooperating ACLU Attorney and I'm representing the 20 Plaintiffs in this case. We're here pursuant to 21 Notice under the Federal Rules of Civil Procedure in 22 the case of Does versus Whitmer for all purposes 23 permitted under the rules. 24 Dr. Turner, I just want to first 25 welcome and then I just want to go through some</p> <p>Page 4</p>

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<p>1 basic rules of the road for today and cover some 2 other material in a prefatory way to make a record. 3 A couple of reminders for you. The 4 court reporter can't take down non-verbal answers or 5 uh-huhs and so it's important that you give a yes or 6 a no or more answer to every question. If you don't 7 understand a question or if you need clarification 8 on a question, you should ask. And also, the court 9 reporter can't take down two people at once, so we 10 should try to avoid talking over each other, okay? 11 THE WITNESS: Yes, sir. 12 MR. REINGOLD: If you answer a 13 question, we're going to assume that you understand 14 it, okay? 15 THE WITNESS: Yes, sir. 16 MR. REINGOLD: From time to time, 17 your Counsel may object to a question, which is 18 fine, but unless he instructs you not to answer, you 19 should answer the question. 20 THE WITNESS: Understood. 21 MR. REINGOLD: Okay. In my 22 experience, sometimes witnesses want to add 23 information that they think is important but isn't 24 what I asked about, and so I want to ask you -- I 25 want to advise you that you should only answer the</p> <p style="text-align: center;">Page 5</p>	<p>1 question that I've asked and if you want to add 2 something more later, your lawyer will have a chance 3 to ask questions when I'm done and you can flesh out 4 any missing details at that point. 5 If your attorney wants to elaborate, 6 the time to do that, as I said, is at the back end, 7 not in the middle or when I'm doing the questioning. 8 Can you agree that you'll try to provide answers 9 that are responsive to the questions that I'm 10 asking? 11 THE WITNESS: Yes. 12 MR. REINGOLD: And if you're not 13 responsive, I may cut you off. If I do, you should 14 stop and as I said, your attorney can ask for more 15 information later. If you need to take a break at 16 any point, let me know. The only thing I ask is 17 that you answer the pending question, okay? 18 THE WITNESS: Yes, sir. 19 --- 20 CROSS EXAMINATION 21 BY MR. REINGOLD: 22 Q Since we're doing this by Zoom, I want to clarify 23 where you are. I'm assuming that you're in Lake 24 Charles, Louisiana; is that right? 25 A That's correct.</p> <p style="text-align: center;">Page 6</p>
<p>1 Q Is there anything in front of you other than your 2 computer screen? 3 A Yes. 4 Q And what is that? 5 A I'm actually operating off of two laptops, so this 6 laptop is doing all of the Zoom and then my records, 7 access to my C.V., things like that are going to be 8 on this laptop. So I have another laptop and then 9 I've also printed out my report. I have a hard copy 10 of my report and that's it pertaining to this 11 case. 12 Q Thank you. Is there anyone else with you? 13 A No, sir. 14 Q And are you under the influence of any medications 15 or any other condition that would impair your 16 ability to be deposed today? 17 A No, sir. 18 Q Okay. Anything that would prevent you from 19 answering the questions truthfully? 20 A No, sir. 21 Q Let's start by covering a little bit about what you 22 did to prepare for the deposition. What did you do 23 to prepare for the deposition today? 24 A I reviewed my report, I reviewed some of the 25 evidence or reports that were provided to me by</p> <p style="text-align: center;">Page 7</p>	<p>1 Mr. Jamison, I reviewed the Notice of Deposition, 2 and then I spoke with Mr. Jamison this morning for 3 about three minutes, not about the content of the 4 deposition but I just had some sort of procedural 5 and administrative questions. That would be how I 6 prepared. 7 Q Did you have any longer substantive conversations 8 with any of your attorneys? 9 A No, sir. Not about the deposition. We talked about 10 the case and my opinion and my report but we haven't 11 spoken specifically about the deposition. 12 Q So those were further back in time? 13 A Yes, sir. 14 Q Okay. And other than the documents that you've just 15 described, did you review anything else? 16 A No, sir. 17 Q And did you speak with anyone else about your 18 deposition? 19 A I e-mailed Dr. Anna Salter and asked her if she 20 thought I would need a certain article for the 21 deposition, or I think I called her and asked her if 22 I would need a certain article for the deposition, 23 but again, that was just kind of procedural and 24 administrative and not substantive. 25 Q All right. And did she tell you you did need it or</p> <p style="text-align: center;">Page 8</p>

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<p>1 you didn't need it?</p> <p>2 A I don't remember. I think she said that it was</p> <p>3 probably excessive preparation on my part, something</p> <p>4 to that nature.</p> <p>5 Q Okay. I want to now turn to your C.V. and you can</p> <p>6 bring it up on your own screen if you wish but for</p> <p>7 the record and so that everyone can see it, I will</p> <p>8 bring it up here. This is going to be marked for</p> <p>9 the deposition as Plaintiff's Exhibit 1, which I</p> <p>10 will try to successfully share. And you now see</p> <p>11 that document?</p> <p>12 A Yes, sir.</p> <p>13 Q All right. And is that a copy of your C.V.?</p> <p>14 A Yes, sir.</p> <p>15 Q I want to go through it with you. This will take a</p> <p>16 bit of time but I think it will be useful. You</p> <p>17 graduated from college in 2002; is that right?</p> <p>18 A Yes, sir.</p> <p>19 Q And you're a psych major at McNeese?</p> <p>20 A Yes, sir.</p> <p>21 Q What was your focus as a psych major as an</p> <p>22 undergrad?</p> <p>23 A It was strictly psychology. It wasn't broken down</p> <p>24 beyond that.</p> <p>25 Q And after college, did you do any work before</p> <p style="text-align: center;">Page 9</p>	<p>1 starting graduate school?</p> <p>2 A Yes.</p> <p>3 Q And what was that?</p> <p>4 A I worked with the Lake Charles Police Department</p> <p>5 Cold Case Homicide Unit for a year.</p> <p>6 Q And was that a job that grew out of what you had</p> <p>7 been doing as an undergraduate in psychology or was</p> <p>8 it unrelated?</p> <p>9 A It was unrelated.</p> <p>10 Q And then was there anything about that experience</p> <p>11 that led you to -- was there other work first before</p> <p>12 you went to grad school?</p> <p>13 A No, sir. I did that the year between graduating</p> <p>14 with my Bachelor's and starting graduate school, I</p> <p>15 took a year and did that work.</p> <p>16 Q Right. And when you applied for graduate school in</p> <p>17 counseling psychology, was that in any way related</p> <p>18 to the work that you had done for the Lakes Charles</p> <p>19 Police?</p> <p>20 A No, sir.</p> <p>21 Q All right. You then came back and you chose a</p> <p>22 Master's program that I take it was called</p> <p>23 Counseling Psychology and I just want to know how</p> <p>24 does that differ from just plain psychology?</p> <p>25 A Counseling psychology is more specific to</p> <p style="text-align: center;">Page 10</p>
<p>1 psychotherapy.</p> <p>2 Q And why did you choose that?</p> <p>3 A Because it was the only Master's program available.</p> <p>4 I was a single father most of my adult life and so</p> <p>5 it was a matter of where I could continue my</p> <p>6 education but still be able to get my son to see</p> <p>7 other members of his family and things like that.</p> <p>8 So at that point, it was a matter of picking a job.</p> <p>9 I didn't especially want to be a therapist or</p> <p>10 anything like that.</p> <p>11 Q And I take it you live close to McNeese and they</p> <p>12 only offered a Master's in Counseling Psychology; is</p> <p>13 that right?</p> <p>14 A They offered other Master's programs but in a</p> <p>15 field -- I mean I had just finished in psychology,</p> <p>16 so it was kind of a natural progression, so... but</p> <p>17 yes, sir.</p> <p>18 Q And then once you finished the Master's, did you go</p> <p>19 directly to Sam Houston for the Ph.D. or was there</p> <p>20 an inter period where you did some work?</p> <p>21 A It was direct. I went directly there.</p> <p>22 Q And what led you to that school?</p> <p>23 A Again, the proximity was the primary reason. I had</p> <p>24 a certain travel radius that I was willing to do and</p> <p>25 they also were looking at some forensic things in</p> <p style="text-align: center;">Page 11</p>	<p>1 terms of research and training that I was interested</p> <p>2 in, so it would have been an extra bonus to have</p> <p>3 been accepted there and I was.</p> <p>4 Q And what were the things that they had that you were</p> <p>5 interested in?</p> <p>6 A It was traditionally a forensic psychology program,</p> <p>7 so everything from electives to practicum placements</p> <p>8 to research opportunities, and then it was</p> <p>9 APA-accredited as a clinical psychology program, so</p> <p>10 it was great because I got the degree that I wanted</p> <p>11 with the curriculum that I was most interested in.</p> <p>12 It was sort of a clinical program with a focus in</p> <p>13 forensics.</p> <p>14 Q And what was it that attracted you about</p> <p>15 forensics?</p> <p>16 A You know, I really wanted to be a musician but as a</p> <p>17 single father, you can't -- the whole starving</p> <p>18 artist thing doesn't pay very well and I needed to</p> <p>19 pick a career and there wasn't much that I was</p> <p>20 really interested in. I enjoyed my time with cold</p> <p>21 case and so I just thought that any work in the area</p> <p>22 of forensics would be interesting and it was.</p> <p>23 Q And then once you started at Sam Houston, I take it</p> <p>24 that you pretty quickly had some practicums that</p> <p>25 were available to you in grad school; is that</p> <p style="text-align: center;">Page 12</p>

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<p>1 right?</p> <p>2 A Yes, sir.</p> <p>3 Q Can you tell us -- one of them listed was MCDSCS in</p> <p>4 Willis, Texas. The acronym wasn't written out and</p> <p>5 so I just wondered what that was.</p> <p>6 A I don't think I ever knew what it was, which is why</p> <p>7 I didn't write it out. It's a deferred -- well, I</p> <p>8 don't really know legally what it is but from a</p> <p>9 mental health point of view, it was people who</p> <p>10 were -- it was adults who were first-time felons,</p> <p>11 adult males, I should say, who were first-time</p> <p>12 felons that had either a substance abuse problem or</p> <p>13 their offense was related to substance abuse. So it</p> <p>14 was an inpatient facility that helped them sort of</p> <p>15 get a job, get on their feet and stay out of prison.</p> <p>16 And then I'm not sure if they were ultimately able</p> <p>17 to have things expunged or what. I'm not sure.</p> <p>18 Q And what was your role when you were doing that?</p> <p>19 A I was just an in-house therapist. I was -- I did</p> <p>20 individual and group treatment largely related to</p> <p>21 substance abuse but just general counseling there.</p> <p>22 Q And then your C.V. says -- shows that from 2007 to</p> <p>23 2009, you also started doing forensic exams in Texas</p> <p>24 with I think it was one of the faculty members but I</p> <p>25 might be wrong, Dr. Conroy?</p> <p style="text-align: center;">Page 13</p>	<p>1 A Yes, sir.</p> <p>2 Q And can you just very briefly describe the work that</p> <p>3 you did during that period of time in Texas?</p> <p>4 A Sure. That was my practicum placement for about two</p> <p>5 years and I did forensic psychological evaluations</p> <p>6 under her in her private practice and through the</p> <p>7 university because she was clinical director.</p> <p>8 Q And were you paid for that or was that viewed as</p> <p>9 part of your education?</p> <p>10 A Boy, I can't remember. All I remember is that I was</p> <p>11 on student loans. I know that everyone had to have</p> <p>12 a practicum and I think if you had an eight-hour</p> <p>13 practicum it was not paid but if you had a 20-hour</p> <p>14 practicum it was, but it might have just been a</p> <p>15 tuition waiver. I really can't remember, sir. I'm</p> <p>16 sorry.</p> <p>17 Q That's all right.</p> <p>18 A If I was paid, it wasn't much.</p> <p>19 Q And I take it you would do the forensic evaluation</p> <p>20 or whatever and were you also the one who would</p> <p>21 testify in court if that was required?</p> <p>22 A No, sir, not while I was in Huntsville, but once I</p> <p>23 went to my internship at the federal prison in Fort</p> <p>24 Worth, which is still technically part of my</p> <p>25 doctoral program, I did testify in federal court for</p> <p style="text-align: center;">Page 14</p>
<p>1 a forensic evaluation that I did there under</p> <p>2 supervision but not -- I never testified while at</p> <p>3 Sam Houston. I would go with her if she had to</p> <p>4 testify but, you know, she would approve the report</p> <p>5 and we'd sign it together and it was basically her</p> <p>6 work product.</p> <p>7 Q All right, that's what I was asking. So you were</p> <p>8 doing some of the hands-on work with the people</p> <p>9 being evaluated or reviewed or whatever and you</p> <p>10 would help draft the report but in the end, it would</p> <p>11 go in under both signatures and she would be the one</p> <p>12 to testify if there was testimony?</p> <p>13 A Right, but to be clear, I did the entire evaluation</p> <p>14 and wrote the entire report. She just added some</p> <p>15 commas and things like that but I mean that's --</p> <p>16 it's her license, so yes.</p> <p>17 Q Okay. All right. You then did the -- so were there</p> <p>18 other practicums in graduate school?</p> <p>19 A Yes, sir.</p> <p>20 Q And again, briefly what were those?</p> <p>21 A I worked at an inpatient hospital that also had an</p> <p>22 outpatient unit. I worked at a juvenile detention</p> <p>23 center in Houston doing forensic evaluations. I</p> <p>24 did, I think, a little bit of counseling at a</p> <p>25 psychological services center. Those are the ones</p> <p style="text-align: center;">Page 15</p>	<p>1 that I can remember aside from -- I know I did many</p> <p>2 semesters under a forensic psychologist doing what</p> <p>3 we just talked about. That ended up being kind of</p> <p>4 where I got assigned mostly.</p> <p>5 Q And was that the Federal Correction Institute at</p> <p>6 Fort Worth or was that -- did that come later?</p> <p>7 A That was later. That was my internship.</p> <p>8 Q Yeah, okay. All right. And what was the subject of</p> <p>9 your dissertation?</p> <p>10 A The role of expert witnesses and juror perceptions</p> <p>11 of evidence and expert witness evidence in sexually</p> <p>12 violent predator civil commitment hearings in the</p> <p>13 State of Texas.</p> <p>14 Q I had noticed that you listed that, I believe, as a</p> <p>15 post doc in 2010-2011 but it says you didn't get</p> <p>16 your Ph.D. until September of 2011. Was there a</p> <p>17 delay in getting your Ph.D. or was the internship</p> <p>18 considered part of it? How did the dates work?</p> <p>19 A Yes, sir. The internship is considered your fifth</p> <p>20 year and after that fifth year, if you're</p> <p>21 satisfactory in your performance and everything</p> <p>22 else, then you can get your diploma at that point.</p> <p>23 So there was no break.</p> <p>24 Q So it's kind of viewed as the equivalent of a post</p> <p>25 doc even though you don't have the Ph.D. yet</p> <p style="text-align: center;">Page 16</p>

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<p>1 officially? 2 A Correct. 3 Q And then now let's go look at your employment. 4 Let's see where we're picking up here. So fair to 5 say your first job post doc actual employment was at 6 the Federal Correctional Complex of Pollock? 7 A Yes, sir. 8 Q And there you were a staff psychologist. What did 9 you do as a staff psychologist? 10 A I treated inmates and then there were certain things 11 that my policy psychologist had to have a role in, 12 like solitary confinement situations, sexual 13 assaults and things of that nature. So that was -- 14 and I was at the penitentiary, which is the highest 15 level of security, and so a lot of times that would 16 be disrupted and we would be assigned to other 17 details that were more just kind of general prison 18 maintenance. 19 So it was -- but the ideal goal is 20 to -- you know, there was times where I did a talk 21 in their introductory orientation and just those 22 types of things. 23 Q So a little bit of jack-of-all-trades -- 24 A Yes, sir. 25 Q -- as a prison psychologist?</p> <p style="text-align: center;">Page 17</p>	<p>1 A Yes, sir. 2 Q And again, were you drawn to work at the prison 3 because of the forensic work you had done and it was 4 a logical next step, or again was it more that you 5 needed to be near Lake Charles for family reasons 6 and this was a decent post and so you took it? 7 A It was a little bit of both because I was willing -- 8 at that point, my son was living with me, so I was 9 willing to travel if we needed to for that year, but 10 I was offered a position close to home and it was 11 just nice, so I guess a little bit of both. 12 Q And I gather that you also were involved in or 13 became involved in media consulting at that time. 14 Can you tell us how you got into that and what it 15 entailed? 16 A I don't remember how I got into it. I think I was 17 speaking at a conference maybe and was asked to 18 participate in an interview and then I got a couple 19 of calls from there, and at first it was something I 20 enjoyed doing, it was a little bit different, but 21 I've really been sort of convicted about not really 22 wanting to do media stuff anymore unless it's a case 23 that I happen to end up working on or something like 24 that. 25 So I did that for a while and then</p> <p style="text-align: center;">Page 18</p>
<p>1 every now and then someone will call with just a 2 general question about not guilty by reason of 3 insanity and I'll help out and do a little interview 4 but that's not something that I really pursue. 5 That's not something that I terribly enjoy. 6 Q That more or less comes with the territory, right? 7 A Yes, sir. People ask you to do a favor for them. I 8 know this guy that works at so and so, would you 9 just talk to them, that sort of thing. 10 Q And when you finished the two years at Pollock, at 11 that point did you wind up employed elsewhere or is 12 that the point at which you moved into a private 13 practice? 14 A That was private practice. 15 Q How did you make that transition? 16 A I had set up a few contracts to do some very basic 17 community psychology work that I thought along with 18 my fiancée's teacher income would be enough to 19 support us and so I made that leap. 20 Q I take it at that point, again from your C.V., that 21 you also were able to pick up some consulting work 22 with the FBI, NCIS, Department of Homeland Security 23 and so forth. Would you describe what you were 24 doing for them? 25 A Sure. I had been building those relationships while</p> <p style="text-align: center;">Page 19</p>	<p>1 I was in the federal prison system but the federal 2 prison system doesn't allow -- I guess they don't 3 want any dual role complication, so they don't allow 4 you as a federal employee to work outside cases and 5 things like that. But I had been cultivating those 6 relationships and so as soon as I went into private 7 practice, I started testifying and doing work 8 largely federally, which generally means that they 9 were investigated at least to some degree by one of 10 those agencies and then that has developed into 11 providing trainings and things like that. 12 Q Let's see. At some point, you also began providing 13 services or you became a member of the Louisiana 14 Registry of Sex Offender Providers, that's further 15 up on our list here up near the top, and that was 16 2013 to the present. Is that just simply signing up 17 on something and then waiting for a call or is it 18 more interactive than that? 19 A It's more interactive than that. 20 Q And how does it work? 21 A It is essentially -- the quickest answer I can give 22 is that it's essentially our State's version of 23 being a licensed sex offender treatment provider. 24 It's not a license, it's a registry but it's the 25 exact same thing, you got to prove your work, you</p> <p style="text-align: center;">Page 20</p>

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<p>1 got to prove your training, you got to have people, 2 you know, write letter. 3 It's the same thing except the 4 difference is -- no. Well, I mean that's how -- so 5 if you want to work with probation and parole or do 6 any kind of sex offender treatment that's going to 7 count for these guys towards completing their 8 State-mandated goals, then you would need to be on 9 that list. 10 Q And the work you would actually do, I take it, is 11 contract work for probation or parole or possibly 12 for the registry itself; is that right? 13 A Yes, sir, largely. Yes, sir. 14 Q And when I say contract work, what I'm imagining, 15 you can correct me if I'm wrong, is say people who 16 are coming out of prison and going into the 17 community, they've been evaluated, parole might be 18 contingent on the fact that they get treatment. Is 19 that kind of an accurate picture of the sort of 20 thing you were doing? 21 A Yes, sir. 22 Q Okay. And you have done that from then until now? 23 A I did it for a while initially in private practice 24 and then stopped but I've recently contracted with 25 the federal system to do -- well, to supervise the</p> <p style="text-align: center;">Page 21</p>	<p>1 treatment of their sex offenders in this district in 2 Louisiana but I'm not actually providing treatment 3 anymore, I quit doing that in about 2015, but I am a 4 part of treatment and supervision and the contract 5 is mine. 6 Q And when you were doing that back in the mid teens 7 or early to mid teens, did you also score people on 8 the Static-99? 9 A Yes. 10 Q And did you score them on other similar kinds of 11 instruments like the STABL or -- for the record, 12 S-t-a-b-l, or the VASOR, V-A-S-O-R? 13 A I think I've used the STABL once and I don't -- I 14 may have used the VASOR once but largely it's been 15 the Static in terms of that -- those types of 16 actuarial instruments. 17 Q And when you were doing that, was that on a per job 18 basis or was it an hourly rate for your time? 19 A Well, I just -- maybe if I can clarify, I didn't 20 really use -- the Static was more -- had already 21 been done by the prison system, so I'm not getting 22 these guys in and scoring them on Statics but I 23 began doing risk assessments fairly early in private 24 practice because of my training and I used the 25 Static for most of my career doing that. So I'm</p> <p style="text-align: center;">Page 22</p>
<p>1 referring to that and I'm only saying that for 2 clarity. 3 Q No, no, I appreciate it. So as people were leaving 4 prison, the Department of Corrections, whatever it's 5 called in Louisiana, they would do the Statics and 6 figure out what they wanted to do with the parole or 7 figure out what they wanted to do with each 8 departing inmate, so I take it your job was more on 9 the treatment side? 10 A Yes, sir, and I'm not sure which instruments the 11 Department of Corrections uses. I work at the Texas 12 Department of Corrections. I know they use the 13 Static, so I'm not really sure about the Louisiana 14 Department of Corrections, and it is the Louisiana 15 Department of Corrections. But yes, I was a 16 treatment provider and a supervisor, so I didn't 17 score the Static for purposes of treatment. 18 Q And when you were doing the treatment, same 19 question, and that is if that was on a contract 20 basis, were you paid hourly or in some other way? 21 If paid hourly, how much an hour? 22 A I'm paid per session and per group and I don't 23 know -- I don't know how much that is because I 24 supervised that work. I have that coming out of my 25 office but as I said, I supervise the providers, so</p> <p style="text-align: center;">Page 23</p>	<p>1 I don't know -- and they get that pay. So I don't 2 know what that pay is. 3 But when I did treatment under the 4 registry, I think I saw -- I think I saw people for 5 maybe \$75 for a session and there was not much of 6 that work back then. 7 Q And was the session typically an hour or less? 8 A Yes, sir, 50 minutes. 9 Q Yeah, okay. And when you were supervising other 10 people's work like that, how did you get paid? Was 11 that on a salary or was that also on a sort of by 12 supervision rate? 13 A I'm supervising that now and I don't -- I don't take 14 a percentage of the treatment hours. I supervise 15 it. Sometimes I sit in on group. I interview the 16 guys who agree to be interviewed for training 17 purposes. I have some -- I have research that is 18 ongoing that I use them for, so I actually don't get 19 paid as a result of that contract, my office mate 20 does. 21 Q So that's effectively sort of a pro bono side of 22 your practice that you get benefits from but that 23 you're not paid for directly? 24 A Well, I was initially paid directly because I had a 25 couple of them on my caseload but I've ended up</p> <p style="text-align: center;">Page 24</p>

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<p>1 traveling so much that I can't. I don't feel that 2 it's fair to them to constantly have to reschedule 3 and talk to somebody different and things like that, 4 so I've ultimately just given up my patient load in 5 the last, I'd say, six months. 6 Q That confused me because I thought you had said that 7 you were doing direct service with community 8 patients for the Department of Corrections only back 9 in the mid or early teens and then stopped doing it 10 and had been doing some supervision but I -- 11 A That's right, but at the outset -- at the outset of 12 the contract, which I started about two years ago, I 13 had one or two patients that I took on my caseload 14 briefly for two or three months before I realized 15 that it wasn't going to work and I gave them all up. 16 Q All right. But again, just so that I make sure I'm 17 understanding, you just said about two years ago 18 there was a contract and you started with some 19 direct patient care and then stopped that, but did 20 that mean the contract stopped but you continued as 21 a volunteer doing the supervision? 22 A No, sir, I still have the contract. I'm just not -- 23 I'm just supervising the work being done now, so I'm 24 not getting paid off of the contract. I'm sorry if 25 I'm being confusing.</p> <p style="text-align: center;">Page 25</p>	<p>1 Q I lost the last thing that you said. 2 A I said I'm sorry -- 3 Q No, no, just before that. You said you're not being 4 paid under the contract? 5 A I'm not being paid. Someone in my office is being 6 paid because they're doing all the work and I'm 7 supervising the work and involved in a research 8 aspect. 9 Q All right. So your sidekick or somebody in your 10 office is doing the individual super -- not 11 supervision but the individual treatment, whatever 12 it is, that person's getting paid an hourly rate and 13 you're kind of hovering above and around them on a 14 volunteer basis? 15 A Yes, sir. 16 Q Okay, that cleared it up. Thank you. 17 I take it you've also done some 18 substance abuse work as an evaluator and you're 19 program certified for that as well? 20 A Yes, sir. 21 Q You said that you've also -- were recently 22 contracted with the feds for sex offender risk 23 assessment and treatment for the Federal District 24 that's in Louisiana. What is it that you do for 25 them?</p> <p style="text-align: center;">Page 26</p>
<p>1 A Where are we looking now, sir? 2 Q That's the one at the top of the page on the shared 3 screen. My cursor is on it. I can never read the 4 cursor on Zoom but you might be able to see it. 5 A Sure. That's the contract that we're talking about 6 now. That's with the federal sex offenders and 7 community supervision. That's what that's referring 8 to. I haven't updated this since 2022, so it 9 doesn't reflect that I'm supervising that now as 10 opposed to treatment provider but I mean the 11 contract is the same. 12 Q All right. This is part of my misunderstanding. 13 What you're saying is -- what we're talking about 14 now is what we were just talking about a few minutes 15 ago. 16 A Yes. 17 Q And I thought we were still talking about the State 18 work and the State Department of Corrections. 19 A Oh, I apologize. That's probably my fault. 20 Q That's okay. It's clarified now. All right. When 21 you do the same work for the feds, was the rate that 22 the feds paid the \$75? 23 A No, sir, that was the one that I'm saying I'm not 24 sure what it was. I think it was about \$75 for an 25 individual session and maybe like 150 for a group</p> <p style="text-align: center;">Page 27</p>	<p>1 and -- but again, I did that for about maybe two 2 months before I realized that I wasn't going to be 3 around enough to do it consistently, so... yeah. 4 Q You also report from 2021 a consultant to the Oceans 5 Boulevard Behavioral Inpatient Center. What were 6 you doing for them? 7 A It's just kind of being on call. It's an inpatient 8 psychiatric center in town here, so it's being on 9 call if they need to have some testing done or 10 something like that. 11 Q And would that be related to sexual offenses or is 12 this just individual patient care? 13 A No, sir, it's pure clinical work, it's not forensic 14 at all. 15 Q How many hours would that entail? 16 A None so far. I think they needed a name on a blank 17 as someone that fills that role, but I'm sure at 18 some point I'll get a referral and if I do, then 19 I'll do testing with them and that would be great, 20 but so far I haven't gotten any referrals. 21 Q And then the last item, meaning the most recent one, 22 is this the one that's really most descriptive of 23 what you do day to day, private clinical practice 24 and forensic practice, competency exams, sanity 25 exams, risk assessment for sex offenders, child</p> <p style="text-align: center;">Page 28</p>

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<p>1 custody evaluations, fitness for duty, I assume</p> <p>2 that's military? Is that a good description of your</p> <p>3 stock in trade for the most part?</p> <p>4 A Yes, sir.</p> <p>5 Q Let me ask what percentage of your work is related</p> <p>6 to evaluations like competency, sanity, risk</p> <p>7 assessment, fitness for duty and diagnostic</p> <p>8 evaluations as opposed to counseling or other</p> <p>9 activities? Give me just a rough percentage.</p> <p>10 A The majority would be forensic evaluations or</p> <p>11 especially evaluations in general. I would estimate</p> <p>12 maybe 60 percent of my work is that kind of work.</p> <p>13 Q And what's the other 40 percent? Can you describe</p> <p>14 that again briefly?</p> <p>15 A Yes, sir. I do some purely clinical stuff like</p> <p>16 we've talked about that's not forensic related and</p> <p>17 I'm involved with research and that takes up a lot</p> <p>18 of time, and then providing trainings and speaking</p> <p>19 at conferences and things is starting to take up</p> <p>20 more and more time.</p> <p>21 Q All right. And when you say clinical, is that</p> <p>22 typically private patients or again is that in other</p> <p>23 settings where you're going in, doing the treatment</p> <p>24 and, you know, coming back out?</p> <p>25 A I'll tell you I don't provide treatment, I don't see</p> <p style="text-align: center;">Page 29</p>	<p>1 patients, I don't do therapy at all. I do</p> <p>2 consulting and testing and evaluating and assessment</p> <p>3 and treatment recommendations and whatnot but I</p> <p>4 don't -- you've just referred to like my caseload or</p> <p>5 patients a couple of times and I just want to make</p> <p>6 sure that I'm clearly representing myself.</p> <p>7 When I do clinical work, it's any</p> <p>8 kind of testing or assessment or consulting that's</p> <p>9 not forensic related, so with hospitals or with</p> <p>10 helping someone get referred to a medical doctor for</p> <p>11 psychiatric medication or something like that. So</p> <p>12 that's really what the clinical portion looks like.</p> <p>13 I'm not -- I do some pro bono</p> <p>14 counseling through my church or family friends and</p> <p>15 things like that but that's usually just a one shot</p> <p>16 and then kind of get them to someplace where they</p> <p>17 need to be to get continued help because I travel so</p> <p>18 much.</p> <p>19 Q So what you're really saying is 60 percent is the</p> <p>20 forensic evaluations and so forth and then the rest</p> <p>21 is similar kinds of work on the non-forensic side</p> <p>22 and then also the sort of smattering of, you know,</p> <p>23 favors to friends or other kinds of obligations.</p> <p>24 And what percent would you say is research oriented?</p> <p>25 A Maybe about 15. Again, I'm estimating.</p> <p style="text-align: center;">Page 30</p>
<p>1 Q That's fine. I understand. I believe I understood</p> <p>2 from your C.V. that you've testified a fair amount,</p> <p>3 and we'll get to that later, in federal court as an</p> <p>4 expert; is that right?</p> <p>5 A Yes, sir.</p> <p>6 Q And when you do that, do you normally file an expert</p> <p>7 report?</p> <p>8 A No, sir. Not normally, no, sir.</p> <p>9 Q Were you aware that under the Federal Rules of Civil</p> <p>10 Procedure, when you write an expert report, you're</p> <p>11 supposed to include a case list of any expert</p> <p>12 depositions or testimony that you've given in the</p> <p>13 last four years and that you're also supposed to</p> <p>14 include a statement of how much you're being paid?</p> <p>15 Did you know that?</p> <p>16 A I did know that, but that's a fairly recent ruling.</p> <p>17 I mean recently in terms of it's not ten years old,</p> <p>18 correct?</p> <p>19 Q And when you did your report for this case, is it</p> <p>20 true that you didn't include a statement of recent</p> <p>21 testimony and didn't list your rates, or did you? I</p> <p>22 mean when you submitted the report.</p> <p>23 A I don't know. I know I have a list -- I have a list</p> <p>24 of cases that I've provided testimony in and things</p> <p>25 like that. I can't remember if I provided it in</p> <p style="text-align: center;">Page 31</p>	<p>1 this case or not.</p> <p>2 Q Okay. And did you include the rate that you charge</p> <p>3 for your work?</p> <p>4 A Yes, sir, that would have all been included with the</p> <p>5 contract and whatnot.</p> <p>6 Q I'm asking if it was included in the report.</p> <p>7 A I did a section where I did talk about how much I</p> <p>8 charge an hour, yes, sir.</p> <p>9 Q And how much are you charging for your work on this</p> <p>10 case?</p> <p>11 A 450 an hour.</p> <p>12 Q And is your rate any different for depositions or</p> <p>13 trial work than it is for writing the report or</p> <p>14 doing the research for the report?</p> <p>15 A No, sir.</p> <p>16 Q About how many hours have you worked on this case?</p> <p>17 A I would estimate probably about around 20 at this</p> <p>18 point, 20 hours, maybe more.</p> <p>19 Q Have you done any prior work for the State of</p> <p>20 Michigan or any of the individual defendants or</p> <p>21 their attorneys?</p> <p>22 A I've testified in Ann Arbor before. I don't</p> <p>23 remember the circumstances. I don't remember if it</p> <p>24 was defense or prosecution but I have testified</p> <p>25 there and -- but I have not worked with these</p> <p style="text-align: center;">Page 32</p>

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<p>1 individuals or anyone affiliated with the case.</p> <p>2 Q During the time that you worked as an expert on this</p> <p>3 case, in how many other court cases are you also</p> <p>4 serving as an expert evaluator or report writer or</p> <p>5 deponent or potential witness in court?</p> <p>6 A I don't know. I don't have an answer to that</p> <p>7 question.</p> <p>8 Q Well, you must have a rough sense of how many other</p> <p>9 cases are on your docket.</p> <p>10 A I would say probably -- can I just ask a clarifying</p> <p>11 question?</p> <p>12 Q You may.</p> <p>13 A Are you referring to cases that I'm working on but</p> <p>14 have sort of gone stagnant for whatever legal reason</p> <p>15 and I'm not actively working on them right now, or</p> <p>16 are you referring to cases where say last week and</p> <p>17 this week I'm preparing and actively working on?</p> <p>18 Q I'm asking for the total. So since you began</p> <p>19 working on this case, I'm trying to get a feel for</p> <p>20 how many other cases while you were doing this that</p> <p>21 you served as an expert evaluator or report writer</p> <p>22 or deponent or expert witness in court, consultant,</p> <p>23 you know, whatever?</p> <p>24 A Twenty to 30, I would say.</p> <p>25 Q Okay, thank you. Now, I want to turn to your</p> <p style="text-align: center;">Page 33</p>	<p>1 research and that is, I think, a little further down</p> <p>2 here. Hold on just a second.</p> <p>3 A May I ask if I can close my door for a second?</p> <p>4 Q Sure.</p> <p>5 A Excuse me. Thank you.</p> <p>6 Q Sure. So I've brought up -- what I'm looking at now</p> <p>7 is the items on your C.V. just before the</p> <p>8 Presentations at Professional Meetings. So I'm</p> <p>9 going in reverse order of research activities that</p> <p>10 you've been involved in. The first one on the list</p> <p>11 is research at the Calcasieu, I don't know how it's</p> <p>12 pronounced, Correctional Center way back in 2004 and</p> <p>13 5, which was on the effect of cell assignment on</p> <p>14 recidivism among violent and non-violent inmates.</p> <p>15 What was your role in that?</p> <p>16 A I was the lead researcher.</p> <p>17 Q And did it result in a study or a publication or was</p> <p>18 it just presented to the correctional center?</p> <p>19 A Are we in the -- I keep trying to go to move my</p> <p>20 screen but I forget that you're controlling it. Are</p> <p>21 we under publications?</p> <p>22 Q No, no, I'm in the research section. And it's --</p> <p>23 here, it's right in the center of the screen now.</p> <p>24 A Okay. I believe I did publish that. Well, it would</p> <p>25 be under publications if I did. I'm sorry.</p> <p style="text-align: center;">Page 34</p>
<p>1 Q All right, we'll see. It may show up. Moving up,</p> <p>2 let's see, there was also -- you did some research</p> <p>3 on -- let's see, number two is this one. Summer of</p> <p>4 2005, the Relationship Between Inmate Performance on</p> <p>5 a Multi-Axial Inventory Instrument and Severity of</p> <p>6 Criminal Behavior, right?</p> <p>7 A Yes, sir.</p> <p>8 Q For the first one and for this one, basically you're</p> <p>9 looking at -- like in the first one, you look at</p> <p>10 inmates' cell assignments and what the effect is on</p> <p>11 recidivism. What is it that you're looking about</p> <p>12 cell assignments? Is it whom they're housed with or</p> <p>13 the, you know, the security level? What are the</p> <p>14 variables that you're trying to figure out?</p> <p>15 A We had a violent scale of offense and it was the</p> <p>16 violence of a non-violent offender who was housed</p> <p>17 with primarily more violent or less violent inmates,</p> <p>18 if there was any difference in the violence of their</p> <p>19 recidivism that could be shown to have any effect on</p> <p>20 the fact that they were paired with -- so for</p> <p>21 example, if they go in for shoplifting and they're</p> <p>22 paired with a murderer or something like that, just</p> <p>23 the kind of the learning effect that is the theory</p> <p>24 behind what we were looking at.</p> <p>25 Q And is the measurement recidivism?</p> <p style="text-align: center;">Page 35</p>	<p>1 A Yes. Well, the type, yes, but yes basically.</p> <p>2 Q Yeah, okay. And then the 2005, 2006 one on the</p> <p>3 inventory, is that similar, the relationship in</p> <p>4 inmate performance as predicted by the inmate -- by</p> <p>5 the inventory, is that what we're looking at?</p> <p>6 A It was looking at the -- it's the MCMI, it's a</p> <p>7 measure of -- it's sort of a brief measure of</p> <p>8 personality traits and we were comparing which</p> <p>9 personality traits correspond to more serious</p> <p>10 criminal behavior.</p> <p>11 Q And again, is that measured after the fact or is</p> <p>12 that backward looking?</p> <p>13 A It's looking at what they had already done.</p> <p>14 Q Yeah. Okay. All right. And then the next one up</p> <p>15 was looking at incarceration of mentally ill and</p> <p>16 also arresting officer judgment correlated to inmate</p> <p>17 performance on mental health tests.</p> <p>18 Again, this is -- correct me if I'm</p> <p>19 wrong but it's basically reviewing something in the</p> <p>20 file about what the arresting officer did or the</p> <p>21 effect of incarceration generally and then looking</p> <p>22 at later mental health status; is that right?</p> <p>23 A Yes.</p> <p>24 Q Okay. And then your thesis at McNeese was actually</p> <p>25 completely unrelated to forensics, right, that was</p> <p style="text-align: center;">Page 36</p>

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<p>1 on Big Wins for Pathological Gambling?</p> <p>2 A Correct.</p> <p>3 Q And how did you get into that?</p> <p>4 A I needed a thesis, man, and Cameron Melville was a</p> <p>5 really cool cat and he and I hung out anyway, and he</p> <p>6 was really looking at gambling because the casinos</p> <p>7 had just recently come to Lake Charles, we have</p> <p>8 casinos here and there was whatever. And so I</p> <p>9 thought yeah, you know, I can get behind that,</p> <p>10 especially if I can get a thesis out of it. It was</p> <p>11 at least interesting to me. That's it, though.</p> <p>12 Q The next ones at the top, there were two, the top</p> <p>13 two ones here, we're at the top of the page, this is</p> <p>14 looking at witness preparation and one looks at</p> <p>15 witness preparation and the other looks at sexually</p> <p>16 violent predators, so commitment court expert</p> <p>17 witness testimony and its effects on jurors,</p> <p>18 right?</p> <p>19 A Yes, sir.</p> <p>20 Q So this is the point where the stuff that you've</p> <p>21 been doing in Texas, the forensic work with sexually</p> <p>22 violent predators, becomes the focus of your</p> <p>23 research and these are the first two research</p> <p>24 projects and then those are going to proliferate as</p> <p>25 we go forward, right?</p> <p style="text-align: center;">Page 37</p>	<p>1 A Yes, sir. Very well said. Like you're saving us a</p> <p>2 lot of time here.</p> <p>3 Q Well, I'm just trying to get a feel for what it is</p> <p>4 and when you did it. The second to last one under</p> <p>5 research experience is a bit of an oddity because</p> <p>6 this is looking at recidivism rates for capital</p> <p>7 murderers in Texas going back 15 years or so. How</p> <p>8 did you come about to do that project?</p> <p>9 A That was a study that Dr. Conroy was consulting as</p> <p>10 an expert on that case and she thought it would make</p> <p>11 a good study because it was so nuanced being murder</p> <p>12 for hire or solicitation of murder for hire crime.</p> <p>13 So we studied that for about two years while I was</p> <p>14 there at least and helped her gather and collect</p> <p>15 data and figure out how to do that and whatnot.</p> <p>16 Q And as a graduate student at that time, what was</p> <p>17 your hands-on participation or what were you</p> <p>18 actually doing?</p> <p>19 A More than likely, I was crunching numbers and</p> <p>20 entering numbers into data sets from TDCJ's data.</p> <p>21 Q And the numbers would have been related to what?</p> <p>22 A Related to their recidivism rates, what those</p> <p>23 reoffenses were, demographic characteristics and</p> <p>24 probably just ensuring that everything that we were</p> <p>25 given in the data set actually was a solicitation</p> <p style="text-align: center;">Page 38</p>
<p>1 for murder for hire. So just, you know, grunt work.</p> <p>2 Q And then the last one is Collaborating with</p> <p>3 Government Behavior Analysis Units on Risk Factors</p> <p>4 for Child Pornography and that's been ongoing. What</p> <p>5 again exactly is it that you do for them?</p> <p>6 A This was an ongoing research study that I was</p> <p>7 collaborating with. They contacted me based on a</p> <p>8 presentation that they saw me do and that's -- but</p> <p>9 that's very slow going and I don't even know if that</p> <p>10 will end up being anything, quite frankly.</p> <p>11 Q Let's take a quick look at your publications.</p> <p>12 A You know, I feel like I have an interesting job</p> <p>13 until I look at the C.V. like this and then it seems</p> <p>14 like the most boring thing in the world.</p> <p>15 Q So looking -- again, we'll just go through these</p> <p>16 pretty quickly to get a sense of your focus, okay?</p> <p>17 The first one here, the State of Louisiana one at</p> <p>18 the bottom, that just had to do with District Court</p> <p>19 and visitation, so we're going to pass that one by.</p> <p>20 The first one that's sort of</p> <p>21 substantively in your field has to do with</p> <p>22 evaluators reporting consistently higher or lower</p> <p>23 scores on the psychopathic checklist revised, the</p> <p>24 PCLR. I take it this grew out of your work during</p> <p>25 the civil commitment hearings, right?</p> <p style="text-align: center;">Page 39</p>	<p>1 A Correct. If I can just point out, on my screen</p> <p>2 halfway through that is the start of what should be</p> <p>3 the -- what should be below that in terms of</p> <p>4 publication and that's the one that we were talking</p> <p>5 about earlier, so it was published.</p> <p>6 Q That's the one the assignment of violent and</p> <p>7 non-violent offenders?</p> <p>8 A Yes, sir.</p> <p>9 Q Okay, thanks for correcting that. And I take it</p> <p>10 that -- let's see. The concern about consistently</p> <p>11 higher or lower scores, is that part of what you</p> <p>12 were seeing doing the civil commitment hearings was</p> <p>13 differences in the evaluators' reports probably</p> <p>14 typically tied to which side they were on; is that</p> <p>15 right?</p> <p>16 A Yes, sir.</p> <p>17 Q And I take it that it bothered you because you felt</p> <p>18 like one side or the other were being in some ways</p> <p>19 biased or unfair; is that fair to say?</p> <p>20 A Yes.</p> <p>21 Q And so you followed up that study with the next one,</p> <p>22 which is the Murrie paper, and that one was on Rater</p> <p>23 (Dis)agreement in Risk Assessment Measures again in</p> <p>24 the same kinds of civil commitment proceedings,</p> <p>25 right?</p> <p style="text-align: center;">Page 40</p>

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<p>1 A Right.</p> <p>2 Q And I like the term adversarial allegiance. That's</p> <p>3 what was annoying you, right?</p> <p>4 A Yes, sir, and that's what we were looking at in the</p> <p>5 study before that as well.</p> <p>6 Q Yeah. And did you find it on both sides or did</p> <p>7 you --</p> <p>8 A Absolutely.</p> <p>9 Q Yeah, okay. So this was a form of --</p> <p>10 A Well, I guess -- never mind. You're hitting my</p> <p>11 nerdy research button.</p> <p>12 Q What I'm saying is what you identified was -- what's</p> <p>13 often known, at least among lawyers, as advocacy</p> <p>14 bias, right?</p> <p>15 A Yes, sir.</p> <p>16 Q I used to give my students identical facts in a</p> <p>17 landlord-tenant case -- landlord-tenant problem, it</p> <p>18 wasn't a case and the assignment was for them to</p> <p>19 come up with a solution that would be fairest to</p> <p>20 both sides and that I was emphatic that that is what</p> <p>21 we wanted. We were targeting perfect fairness to</p> <p>22 both sides. Then I'd assign half of them to</p> <p>23 represent the landlord and half of them to represent</p> <p>24 the tenant and what do you suppose happened?</p> <p>25 A Wow. Did you publish that?</p> <p style="text-align: center;">Page 41</p>	<p>1 Q No, no, this was just an exercise in class.</p> <p>2 A Yeah. Was it very clear?</p> <p>3 Q It was very clear, yes.</p> <p>4 A It was very clear in these studies. I mean it's --</p> <p>5 Q Yeah, invariably the --</p> <p>6 A Yeah.</p> <p>7 Q Once you're assigned to a side, your sense of what's</p> <p>8 fair is completely colored by your side, and I take</p> <p>9 it that's what you were finding as well?</p> <p>10 A Yes, sir. And then as you'll see up a couple more,</p> <p>11 we ended up publishing an article in a textbook</p> <p>12 about how to combat that, you know, what it looks</p> <p>13 like, that poll and that allegiance and things to be</p> <p>14 aware of. There it is, The Ethical Challenges.</p> <p>15 Q Yes.</p> <p>16 A So that was an interesting little time. It's</p> <p>17 interesting that you did that with your students.</p> <p>18 That's exactly what we were showing.</p> <p>19 Q And let's see, number 4. This is the one we were</p> <p>20 just talking about, my number 4. Let's go up to</p> <p>21 Boccaccini on Ethical Challenges in the same</p> <p>22 context. Again, is your conclusion that the ethical</p> <p>23 challenges face both sides or do your articles</p> <p>24 reflect more discontent with the defense side?</p> <p>25 A No, sir, all -- all of the above.</p> <p style="text-align: center;">Page 42</p>
<p>1 Q Okay. Well, you mean yes, some more unhappiness</p> <p>2 with the defense side or --</p> <p>3 A No, sir, just look, here's studies we've done,</p> <p>4 here's the evidence, here are some things to</p> <p>5 remember, you know, and here are some things to just</p> <p>6 be self-aware of that can hopefully help you not</p> <p>7 fall victim to this was the idea.</p> <p>8 Q All right, let's look at next one up. This had to</p> <p>9 do with risk scoring, the one on the top, which is</p> <p>10 another Boccaccini one. Again, is part of this</p> <p>11 coming out of the fact that the risk scores done by</p> <p>12 each side differ and then you have to argue to the</p> <p>13 jury about who's right, that sort of thing?</p> <p>14 A Yes, sir, essentially. Yes, sir.</p> <p>15 Q Okay. And we'll go on up to the next page.</p> <p>16 A Well, it's going to bother me. Can I just add it</p> <p>17 was not only that but it was also, you know, we</p> <p>18 think that they -- we think that they care as</p> <p>19 experts about the PCLR and the Static and we think</p> <p>20 that the juries listen to us and that we're very</p> <p>21 important as experts, so we wanted to look at how</p> <p>22 much does the jury care and we had them rank what</p> <p>23 they care about and we were bottom of the barrel.</p> <p>24 They really don't consider the scores a lot when</p> <p>25 they deliberate, so that's one of the main things we</p> <p style="text-align: center;">Page 43</p>	<p>1 were looking at, too.</p> <p>2 Q Is that in part, do you think, because the two</p> <p>3 experts cancel each other out or is it just they</p> <p>4 just don't care about the science or that part of</p> <p>5 the science from anybody?</p> <p>6 A I think maybe a little bit of both.</p> <p>7 Q Moving up so we can get through this and get to the</p> <p>8 guts of our deposition. The one at the bottom of</p> <p>9 the page, that one had to do with the legal standard</p> <p>10 that's applied in sex offender civil commitment</p> <p>11 trials; is that right?</p> <p>12 A Yes.</p> <p>13 Q And it's actually a pretty -- it's not all that high</p> <p>14 a standard, right, it's likely to reoffend?</p> <p>15 A There's a bit more with it than that but what we</p> <p>16 were looking at was some states' civil commitment</p> <p>17 laws have percentages assigned to the likelihood and</p> <p>18 in Texas there's not and so it just says likely and</p> <p>19 that's left up to the jury. So we asked the jury</p> <p>20 what does likely mean to them and then we got a</p> <p>21 whole range of answers.</p> <p>22 Q Okay. Next one again, very similar, jurors' views</p> <p>23 on the value and objectivity of expert witnesses.</p> <p>24 We'll go on up to the next one. Jurors' report on</p> <p>25 risk scores, again more of the same. Let's see.</p> <p style="text-align: center;">Page 44</p>

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<p>1 The next one is the piece you did for</p> <p>2 the U.S. Attorneys bulletin on -- this one's</p> <p>3 refuting defense psychology and risk assessment</p> <p>4 reports at sentencing. I take it this one is more</p> <p>5 of an advocacy piece in the sense that it's from the</p> <p>6 perspective of the government side of the case and</p> <p>7 it's counseling attorneys on how to deal with</p> <p>8 refuting what the defense is presenting; is that</p> <p>9 right?</p> <p>10 A Right. But as part of it and if it was going to be</p> <p>11 a publication, I wanted to analyze some data, so I</p> <p>12 asked them to provide me with a sample of expert</p> <p>13 risk assessments from defense experts. So my</p> <p>14 section of the article was analyzing that data.</p> <p>15 Q Okay. But the publication itself is designed to --</p> <p>16 A Sure.</p> <p>17 Q It's designed to improve government lawyers' ability</p> <p>18 to refute defense psychological reports and risk</p> <p>19 assessment reports at sentencing?</p> <p>20 A Right, when they're misrepresentative, not just a</p> <p>21 general how to attack a psychologist but just when</p> <p>22 they're irresponsible, I guess.</p> <p>23 Q All right, we're getting near the end. The Trupp</p> <p>24 paper was generalizability of certain findings to</p> <p>25 scores assigned to individuals of a sex offense.</p> <p style="text-align: center;">Page 45</p>	<p>1 Can you just again tell us exactly what this was</p> <p>2 about?</p> <p>3 A It's just looking at various types of psychopathy</p> <p>4 and how psychopathy can manifest itself differently</p> <p>5 in people. Some might be smooth talking, some might</p> <p>6 be more concrete. These next two are looking at</p> <p>7 those different presentations of psychopathy.</p> <p>8 Q What is your definition of psychopathy?</p> <p>9 A It's the structure, it's the personality and</p> <p>10 behavioral structure that's most commonly measured</p> <p>11 by the PCL-R by Dr. Robert Hare, it's similar to</p> <p>12 antisocial personality disorder and its framework,</p> <p>13 I'd say.</p> <p>14 Q And that's the one that's used most commonly with</p> <p>15 sexually violent predators in civil commitment</p> <p>16 hearings?</p> <p>17 A Yes, sir, it's actually mandated by the statute that</p> <p>18 you have to assess for psychopathy and that's the</p> <p>19 one most frequently used, yes, sir.</p> <p>20 Q All right. And then it looks like between 2015 and</p> <p>21 2021, you didn't do any publication work. Was there</p> <p>22 a reason for that?</p> <p>23 A Yeah, I was trying to put a practice together and,</p> <p>24 you know. And this research work is all -- I mean</p> <p>25 no one gets paid for any of this, so this is all</p> <p style="text-align: center;">Page 46</p>
<p>1 just doing it for a love of wanting to contribute to</p> <p>2 the field.</p> <p>3 Q And are most of your collaborators in a similar</p> <p>4 position to you, that is, private practitioners, or</p> <p>5 are many of these co-authors, university or</p> <p>6 people -- or academics?</p> <p>7 A Most of them are academicians and this is what they</p> <p>8 get to do for money. One I can think of is also in</p> <p>9 private practice.</p> <p>10 Q And the ones where you're the last author, if this</p> <p>11 is like other fields, typically the authors are</p> <p>12 listed in relation to the contribution that they</p> <p>13 made to the paper. So is it fair to say that if</p> <p>14 you're last, you had less to do with what's in the</p> <p>15 paper and if you're first, you're lead author and</p> <p>16 had the most to do with it?</p> <p>17 A Sure, I think that's very fair.</p> <p>18 Q Okay. All right. Sir, is it fair to say that the</p> <p>19 great bulk of your publications address issues that</p> <p>20 arise or that arose out of what you saw in the</p> <p>21 sexually violent predator civil commitment</p> <p>22 hearings?</p> <p>23 A Yes, sir.</p> <p>24 Q And it's true, isn't it, that those kinds of</p> <p>25 hearings are used to keep offenders in a custodial</p> <p style="text-align: center;">Page 47</p>	<p>1 setting even after their criminal sentence has been</p> <p>2 served?</p> <p>3 A Yes.</p> <p>4 Q And in fact, these are people who otherwise would go</p> <p>5 free, they've actually discharged off their sentence</p> <p>6 but the State is seeking to keep them in custody or</p> <p>7 a form of custody because they're viewed as so</p> <p>8 dangerous?</p> <p>9 A Yes.</p> <p>10 Q Is it fair to say that the number of people so</p> <p>11 confined is a tiny percentage of all convicted sex</p> <p>12 offenders?</p> <p>13 A Yes.</p> <p>14 Q The web this morning told me that Texas has about a</p> <p>15 hundred thousand people on its registry. Does that</p> <p>16 sound right?</p> <p>17 A I don't know. I'll take your word for it.</p> <p>18 Q Okay, a little over a hundred, and the biannual</p> <p>19 report of the Texas Civil Commitment Office that</p> <p>20 runs the civil commitment process tells me that as</p> <p>21 of on November 30th, 2022, there were 572 civilly</p> <p>22 committed sexually violent predators. Does that</p> <p>23 also strike you as about right?</p> <p>24 A Yes, sir.</p> <p>25 Q So it's about one-half of one percent of all people</p> <p style="text-align: center;">Page 48</p>

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<p>1 with sexual offenses?</p> <p>2 A Yes, sir, it's very small.</p> <p>3 Q And as the name implies, they are among the most</p> <p>4 dangerous of sexual offenders; is that fair to say,</p> <p>5 too?</p> <p>6 A Yes, sir.</p> <p>7 Q And many have psychopathic or sociopathic</p> <p>8 personality disorders?</p> <p>9 A Yes, sir.</p> <p>10 Q And it's true that once civilly committed, a great</p> <p>11 many of them remain committed for years even if</p> <p>12 there's a form of annual or other periodic review?</p> <p>13 A Biannual, yes, sir.</p> <p>14 Q Is it also fair to say that few of your studies of</p> <p>15 the published studies involve statistical analysis</p> <p>16 of recidivism or the likelihood of reoffending,</p> <p>17 whether detected or undetected?</p> <p>18 A No, sir, I wouldn't agree with that. There were</p> <p>19 several that we talked about that looked at</p> <p>20 recidivism, you know, so I guess --</p> <p>21 Q Well, the big one that we looked at, the Texas one</p> <p>22 on murderers didn't look at analysis of sexual</p> <p>23 recidivism, right?</p> <p>24 A Correct.</p> <p>25 Q And some of the other ones that were in prison where</p> <p style="text-align: center;">Page 49</p>	<p>1 you were looking at the effects of having a certain</p> <p>2 kind of roommate or how you scored on an inventory,</p> <p>3 those two weren't limited to sex offenders, that was</p> <p>4 general recidivism, right?</p> <p>5 A Right. If you just want to say that few of my</p> <p>6 publications have dealt with recidivism, I'll agree</p> <p>7 with that. If that's what you said, I apologize,</p> <p>8 I'll agree.</p> <p>9 Q Okay.</p> <p>10 A I only hesitated because I think it's</p> <p>11 misrepresentative to say that with an implication</p> <p>12 that I'm not familiar with that kind of work because</p> <p>13 one study is a lot of work, so to have a few that</p> <p>14 dealt with it, I've dealt with it a lot. That's</p> <p>15 all.</p> <p>16 Q But not in the context of sexual recidivism?</p> <p>17 A Well, all of the sexually violent predators civil</p> <p>18 commitment hearings are inherently related to sexual</p> <p>19 recidivism. They all have Static-99 scores, they</p> <p>20 all have PCLR scores, they all have a history of</p> <p>21 repeating. So just because it doesn't say that in</p> <p>22 the title, that's a huge part of what we're</p> <p>23 factoring into that data analysis. So in that</p> <p>24 sense, I would say that most of my studies have</p> <p>25 actually involved recidivism in some capacity.</p> <p style="text-align: center;">Page 50</p>
<p>1 Q I think you're making a different point than what my</p> <p>2 question was.</p> <p>3 A Okay.</p> <p>4 Q What I'm asking is -- and we just established that</p> <p>5 that extremely dangerous population is half of one</p> <p>6 percent of the most dangerous people on the registry</p> <p>7 or with sexual offenses, right?</p> <p>8 A Right.</p> <p>9 Q And they're not representative of the entire range</p> <p>10 of all people with sexual offenses?</p> <p>11 A Correct.</p> <p>12 Q And to the extent that you're looking at recidivism</p> <p>13 of that group, it bears little to no relationship</p> <p>14 with the recidivism of the full range of all people</p> <p>15 who have committed sexual offenses?</p> <p>16 A Okay, that's fine. That's fair. Yes, sir.</p> <p>17 Q And the recidivism studies that you actually did</p> <p>18 that looked not at individuals in individual cases</p> <p>19 but that involved pulling up data as to one</p> <p>20 variable, like whom they were lodged with or how</p> <p>21 they scored on a test and then correlating that or</p> <p>22 seeing that they correlated with recidivism, the</p> <p>23 kinds that amount to recidivism thereafter, right?</p> <p>24 A Yes.</p> <p>25 Q And -- all right, I'll leave it at that. Okay.</p> <p style="text-align: center;">Page 51</p>	<p>1 So none of your research or writing</p> <p>2 has been on the subject of recidivism by all people</p> <p>3 with sexual offense convictions as opposed to those</p> <p>4 who are sexually violent predators?</p> <p>5 A That sounds right. I know I've done --</p> <p>6 Q That's all I need. All right. And you've done no</p> <p>7 research or writing on undetected offending by all</p> <p>8 people with a sexual offense conviction, right?</p> <p>9 A Right.</p> <p>10 Q Okay. Are there any articles that you're working on</p> <p>11 now?</p> <p>12 A Yes. There's another publication, I think it's on</p> <p>13 Manuscripts in Progress, the APOD instrument that I</p> <p>14 created, that's been published as well.</p> <p>15 Q And we'll talk about that a little bit more later.</p> <p>16 Have you ever thought about planning an article on</p> <p>17 how some of the defense experts in this case are</p> <p>18 either intentionally or carelessly using improper</p> <p>19 terminology in a way that distorts or minimizes</p> <p>20 undetected defending?</p> <p>21 A No.</p> <p>22 Q Let's turn to your case list, which requires a</p> <p>23 different exhibit, so let me stop sharing. I</p> <p>24 stopped sharing. Can you no longer see the screen</p> <p>25 that I had on before?</p> <p style="text-align: center;">Page 52</p>

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<p>1 A Yes, sir.</p> <p>2 Q Okay, thanks. I just want to make sure that my</p> <p>3 computer has pulled up the screen. I've got two</p> <p>4 screens and one used to be two and two is now one</p> <p>5 and so I want to make sure I'm in the right place.</p> <p>6 Let's look at the case list. This</p> <p>7 will be marked or can be marked as Exhibit 2. Let</p> <p>8 me share it. That is this one and I am sharing.</p> <p>9 Can you see that?</p> <p>10 A Yes, sir.</p> <p>11 Q And that's the list of cases that you've provided.</p> <p>12 It may not have been provided with the report but</p> <p>13 that we eventually got, right?</p> <p>14 A Yes.</p> <p>15 Q Turning to page 2 of that, I want to start with the</p> <p>16 other. This is Special Prosecution Unit, Civil</p> <p>17 Division, State of Texas and it says 75. I assume</p> <p>18 that means 75 cases that you worked on for the State</p> <p>19 of Texas; is that right?</p> <p>20 A Yes.</p> <p>21 Q And every one of those, is it safe to assume that</p> <p>22 you were doing some kind of forensic evaluation on</p> <p>23 the defendant we kind of talked about before with</p> <p>24 Dr. Conroy on her reports and ultimately her</p> <p>25 testimony and those were on behalf of the Special</p> <p style="text-align: center;">Page 53</p>	<p>1 Prosecution Unit?</p> <p>2 A Actually, all of these are sexually violent</p> <p>3 predators civil commitment cases out of the State of</p> <p>4 Texas where I've been retained to testify -- where</p> <p>5 I've testified, not where I've been retained, where</p> <p>6 I've testified.</p> <p>7 Q So these are much more recent than the ones you did</p> <p>8 way back when?</p> <p>9 A Correct.</p> <p>10 Q And what's the time period over which these cases</p> <p>11 went on?</p> <p>12 A I believe from the time I was -- from about 2014</p> <p>13 until when this list was made, which is being</p> <p>14 updated by my secretary now, but until this list was</p> <p>15 made, so from 2014 to -- I mean earlier this year</p> <p>16 but -- or last year. So recently.</p> <p>17 Q When you finish the updated one, if you can add to</p> <p>18 it the date of each case and if you haven't, the</p> <p>19 file number of each case, I would appreciate having</p> <p>20 a list that has those things on it. Is that</p> <p>21 something that you're able to do?</p> <p>22 A I will do whatever Mr. Jamison advises me to do.</p> <p>23 Q All right. Because without a date and without a</p> <p>24 file number, it can be awfully hard to find cases</p> <p>25 and if that's something you know and have available</p> <p style="text-align: center;">Page 54</p>
<p>1 that is going to take us forever to find, I'd like</p> <p>2 to have that, okay?</p> <p>3 A Understood.</p> <p>4 Q All right. So these are 75 cases where you did the</p> <p>5 workup and testified. In civil commitment hearings,</p> <p>6 I assume there's like never a settlement, is that</p> <p>7 right, or almost never? I don't want to overstate</p> <p>8 it.</p> <p>9 A Okay, like -- I think what we're talking about would</p> <p>10 be like an agreed judgment where they just say okay,</p> <p>11 fine, I'll be civilly committed?</p> <p>12 Q Yes.</p> <p>13 A That does happen but it's certainly more rare, yes,</p> <p>14 sir.</p> <p>15 Q And in the 75 cases in which you have testified, I</p> <p>16 take it that that didn't happen?</p> <p>17 A Correct. That's correct.</p> <p>18 Q Of the 75 cases that you testified in -- let me ask</p> <p>19 it a different way. In every case -- let me back up</p> <p>20 a minute.</p> <p>21 How is it that you get retained?</p> <p>22 A I have a contract with the State of Texas, neither</p> <p>23 of these two divisions. These two divisions</p> <p>24 prosecute or defend inmates either civilly or</p> <p>25 criminally. So there's not a lot of civil stuff</p> <p style="text-align: center;">Page 55</p>	<p>1 going on, as you can imagine. So the civil division</p> <p>2 of this SPU, which is the Special Prosecution Unit,</p> <p>3 and the State Council for Offenders Civil Division</p> <p>4 handle all of the civil commitment cases in the</p> <p>5 State of Texas as, you know, prosecution or defense</p> <p>6 or petitioner, whatever.</p> <p>7 I have a contract separately with the</p> <p>8 State of Texas to do the initial evaluations on the</p> <p>9 people that they want screened and so I conduct</p> <p>10 several of those a month and report that back to</p> <p>11 TDCJ and then it's me and about five other</p> <p>12 psychologists that we do those and we give an</p> <p>13 opinion as to whether we think the person has a</p> <p>14 behavioral abnormality that makes them likely to</p> <p>15 reoffend. And then the State of Texas forwards the</p> <p>16 case on to the Special Prosecution Unit.</p> <p>17 So I don't mean to meander, I'm</p> <p>18 trying to give you swift answers to your questions,</p> <p>19 but the 75 cases that I've been retained on, the</p> <p>20 vast majority of those I did an initial evaluation</p> <p>21 where I said yes, I think this person has a</p> <p>22 behavioral abnormality, so I was just retained by</p> <p>23 them to testify as to that opinion.</p> <p>24 The other cases with the -- one's a</p> <p>25 private defense attorney, 20 times State counsel for</p> <p style="text-align: center;">Page 56</p>

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<p>1 offenders I was retained. But at that time when I'm</p> <p>2 retained to do an evaluation, I'm doing an</p> <p>3 evaluation of another colleague that has already</p> <p>4 opined. Most of the time when I do the initial</p> <p>5 evaluation, I find that there is not a behavioral</p> <p>6 abnormality in some of the times that I do that.</p> <p>7 So that's how I'm retained is because</p> <p>8 I'm involved in the process from the beginning and</p> <p>9 then now at this point, both offices just know me</p> <p>10 from testifying and I go and present research to</p> <p>11 them and things like that.</p> <p>12 Q In what percent of the cases, of the 75 cases listed</p> <p>13 here did you testify for the prosecution?</p> <p>14 A Those are all prosecution cases where I testified.</p> <p>15 Those are Special Prosecution cases.</p> <p>16 Q Are there also defense cases in Texas in which</p> <p>17 you've testified?</p> <p>18 A This is -- so for the State Counsel for Offenders</p> <p>19 Civil Division in a sexually violent predator civil</p> <p>20 commitment case, I testified for them on one</p> <p>21 occasion. I was retained by them on 20 occasions.</p> <p>22 I was retained by a private defense attorney on</p> <p>23 another occasion but I testified --</p> <p>24 Q Okay, when you were retained in the other</p> <p>25 approximately 20 cases, were you -- did you not</p> <p style="text-align: center;">Page 57</p>	<p>1 testify because you thought that the person should</p> <p>2 be civilly committed?</p> <p>3 A Well, I wouldn't say I thought the person should be</p> <p>4 civilly committed. I didn't testify because I agreed</p> <p>5 with the initial evaluator that the person did have</p> <p>6 a behavioral abnormality.</p> <p>7 Q All right. So in all but one of 20 cases on the</p> <p>8 defense side where you were asked to evaluate with a</p> <p>9 potential of going to trial, in only one did you</p> <p>10 find that the case in your view was defensible under</p> <p>11 the standard, under the legal standard that was</p> <p>12 required and then testified in that case; is that</p> <p>13 fair to say?</p> <p>14 A Yes, sir.</p> <p>15 Q Okay. And conversely, when doing evaluations for</p> <p>16 the State of Texas, we know that in 75 of the cases,</p> <p>17 you did the evaluation and then testified. What</p> <p>18 percentage of the cases -- in what percentage of the</p> <p>19 cases would you say you find that the person meets</p> <p>20 the standard so that the case should go forward?</p> <p>21 A Well, it's probably been about 45 of those cases or</p> <p>22 40 of those cases where I did that initial</p> <p>23 evaluation I was talking to you about, so I was</p> <p>24 essentially just giving my own opinion. But then I</p> <p>25 was retained the rest of the time by them to give a</p> <p style="text-align: center;">Page 58</p>
<p>1 second opinion.</p> <p>2 The majority of that time I have</p> <p>3 agreed with the initial evaluator like I did with</p> <p>4 the defense that there was a behavioral abnormality</p> <p>5 but there's been about, I'd say, 17, 18, 20 times</p> <p>6 that the Special Prosecution Unit has retained me to</p> <p>7 evaluate someone that has already been found to have</p> <p>8 a behavioral abnormality that makes them likely to</p> <p>9 reoffend sexually and I've told them that that's not</p> <p>10 my opinion and that I disagree.</p> <p>11 Q And out of how many cases total is the 17 or 18?</p> <p>12 A It's probably close to -- it's probably close to</p> <p>13 between 90 and a hundred, somewhere in there at this</p> <p>14 point.</p> <p>15 Q Let's take a look at the federal cases. Why don't</p> <p>16 you just as a starting point tell us when you're</p> <p>17 doing the prosecution side cases, are these straight</p> <p>18 up criminal cases or are these also some kind of</p> <p>19 specialty case done by the federal government?</p> <p>20 A These would be all criminal cases, if I'm not</p> <p>21 mistaken.</p> <p>22 Q And over what period of time does the federal side</p> <p>23 of this case list cover?</p> <p>24 A 2013 up until now.</p> <p>25 Q Okay. All right, let's start with the one civil</p> <p style="text-align: center;">Page 59</p>	<p>1 case because that's an exception to the rule here.</p> <p>2 Srok versus Coppola Wine Company, a case in</p> <p>3 California. You gave testimony, you did a record</p> <p>4 review and then gave testimony on behalf of the</p> <p>5 plaintiff. What was that case about?</p> <p>6 A I gave -- I was deposed, I did not testify in court,</p> <p>7 so I need to fix that. That was -- I mean it's</p> <p>8 technically testimony, I guess, but I'd rather</p> <p>9 differentiate. She was suing the Coppola Wine</p> <p>10 Company for sexual harassment -- sexual assault and</p> <p>11 sexual harassment, I believe.</p> <p>12 Q And what was -- how did you come to be involved in</p> <p>13 that case?</p> <p>14 A I was retained by that attorney.</p> <p>15 Q And were you qualified by the court as an expert?</p> <p>16 Or apparently not because you only got as far as</p> <p>17 deposition, right?</p> <p>18 A Correct.</p> <p>19 Q And in what field or specialty were you holding</p> <p>20 yourself out as an expert to opine about?</p> <p>21 A Sexual assault and impact on victims, grooming</p> <p>22 behaviors, risk.</p> <p>23 Q Okay. And what was the outcome of the case, if you</p> <p>24 remember?</p> <p>25 A I don't remember.</p> <p style="text-align: center;">Page 60</p>

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<p>1 Q All the rest of the cases are criminal cases; is 2 that right? 3 A Yes, sir. 4 Q Let's start with the -- I believe there are only 5 five defense cases, so let's start with those. At 6 the top of the chart here -- let's just pick the 7 first one so I get a feel for what you're doing. 8 U.S. versus Fitzhugh, it happens it 9 was in my district, the Eastern District of 10 Michigan. It says evaluation/consult. Tell us what 11 that meant in Fitzhugh. 12 A I'll tell you, Mr. Reingold, I'm going to have a 13 hard time remembering most of these. This is a lot 14 of work, I do a lot of evaluations and I just don't 15 remember all of them. 16 Q Are there any of the five defense ones that you do 17 remember, Anderson, Eaves, Talamonti, Hussain and 18 Fitzhugh? 19 A No, sir. I mean -- 20 Q Is there any significance of the order in which the 21 cases are listed? Are these oldest to newest? 22 A I don't know. My secretary did this. I'm sorry. 23 Q When was the last time you were doing an evaluation 24 or consult in federal court? 25 A I don't remember.</p> <p style="text-align: center;">Page 61</p>	<p>1 Q It was long enough ago that you don't remember? 2 A Obviously, yes, sir. 3 Q Okay. Again, what's the time period that these 4 cover then? I thought you said 2013 to the present 5 but I may have been wrong. Are you going to correct 6 that if it's not right? 7 A No, sir, it's up to whenever this list was made and 8 I talked about it being updated but, you know, I 9 don't remember those. I don't know what you want me 10 to tell you. I can talk to you about the ones I do 11 remember. 12 Q Well, I'm trying to get a feel for the most recent 13 one. Was it like one within the last year, within 14 the last two years, three years? 15 A Can we go down towards the bottom? 16 Q Sure. 17 A Those are all of the -- okay, Robert Kelly, that was 18 the R. Kelly trial. That was last fall, I believe. 19 Q Let's look at the ones that are labeled as blind 20 testimony. I think there's only four and they're 21 all on this page. What does blind testimony mean? 22 A That's where I'm brought in to testify about 23 something that I'm an expert in without any 24 knowledge of the case or other evidence in the case. 25 Q So does that mean you have to sit through the entire</p> <p style="text-align: center;">Page 62</p>
<p>1 trial and hear what's presented? 2 A No, sir, usually I'm the first one on and then 3 out. 4 Q So what is it that you're talking about? 5 A Aspects of sexual offending, grooming, impact on 6 victims, risk. 7 Q And would you know anything about the case when you 8 come in? 9 A No, sir. That's why -- 10 Q Yeah, okay. And are you hired by the court to do 11 that, are you effectively an expert for the court as 12 opposed to for one of the parties? 13 A No, sir, usually it's for one of the parties. 14 Q But it's testimony that's intended to be completely 15 unconnected to the facts of the case and is just 16 general background information for the benefit of 17 the jury? 18 A Yes, sir. 19 Q And all you know is what the charge is or do you not 20 even know that? 21 A Sometimes I don't even know that. 22 Q And you've done that, it looks like, four times and 23 in all four cases, is it basically on grooming and 24 some sort of perpetrator behavior and victim 25 behavior?</p> <p style="text-align: center;">Page 63</p>	<p>1 A Yes, sir. 2 Q All right. Are you cross-examined in those 3 settings? 4 A Yes, sir. 5 Q And is your testimony prepared with the lawyer for 6 whose side you're going to testify? 7 A No, sir. Sometimes minimally they'll ask me a 8 general question over a phone or at a meeting, you 9 know, some kind of pretrial interview and I'll 10 answer, but I don't -- you know, my answers might 11 refer to a male victim or a child victim and that's 12 not necessarily the case, so we don't go over -- 13 we'll talk about qualifications and things like 14 that. 15 Q I guess what I'm trying to get a feel for is how you 16 know what to testify on if you know nothing about 17 the case, I mean, and don't even know the charge. 18 A Well, there are aspects of sexual offending that I 19 feel qualified as an expert on to testify that these 20 attorneys, I guess, think are helpful to the triers 21 of fact in one way or another. I've never been not 22 qualified as an expert. 23 Q Okay. All right, on the cases that say 24 evaluation/consultation, I take it those are ones 25 where you were never deposed or testified; is that</p> <p style="text-align: center;">Page 64</p>

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<p>1 right?</p> <p>2 A Yes, sir.</p> <p>3 Q And when you do the evaluation or consultation, if</p> <p>4 it doesn't move forward to deposition or to</p> <p>5 testimony, is that signaling that you told the</p> <p>6 lawyers by whom you were hired that you didn't like</p> <p>7 their case, or is it more open than that? How does</p> <p>8 that work?</p> <p>9 A Sometimes that's been the case but other times it's</p> <p>10 just been maybe the person, you know, ultimately</p> <p>11 pled, you know, or changed their plea or something</p> <p>12 like that and it just didn't end up happening.</p> <p>13 Q On any of these, can you tell us which was which or</p> <p>14 do you have no recollection as to that as well?</p> <p>15 A I just don't -- I don't remember. I'm sorry.</p> <p>16 Q All right. If it says evaluation, consultation and</p> <p>17 testimony, does that mean a deposition and</p> <p>18 testimony?</p> <p>19 A Not necessarily, no, sir.</p> <p>20 Q And of all the cases listed here, have you ever not</p> <p>21 been qualified by the court when you got to court?</p> <p>22 A No, sir.</p> <p>23 Q And has your testimony or any portion of your</p> <p>24 testimony ever been rejected by the court?</p> <p>25 A No, sir.</p> <p style="text-align: center;">Page 65</p>	<p>1 Q And is that true in both defense cases -- couldn't</p> <p>2 be true in defense cases because none of the defense</p> <p>3 cases made it into testimony; is that right?</p> <p>4 A Right. That's true in my career.</p> <p>5 Q That most cases don't make it to testimony?</p> <p>6 A No, sir, that I've never been not qualified once</p> <p>7 I've gotten to court and I've never had a part of my</p> <p>8 testimony rejected.</p> <p>9 Q Okay, but I was asking you -- we've gone beyond</p> <p>10 that. I was asking you a different question. With</p> <p>11 the defense cases, there are only five of them but</p> <p>12 none of them made it to testimony, right?</p> <p>13 A Right.</p> <p>14 Q Do you remember if in those cases you were on board</p> <p>15 with the defense position?</p> <p>16 A I think it's the same as the others, some of the</p> <p>17 times I was, some of the times I wasn't.</p> <p>18 Q In what percentage of the prosecution cases would</p> <p>19 you say you disagree with the prosecution's case and</p> <p>20 told them that?</p> <p>21 A It would be a smaller amount. I think most of the</p> <p>22 time -- I think most of the time that I'm reached</p> <p>23 out to, it's because a case is, you know, especially</p> <p>24 significant in one way or the other and so I've not</p> <p>25 had as many -- I would say it would be a smaller</p> <p style="text-align: center;">Page 66</p>
<p>1 percentage of time but it has happened.</p> <p>2 Q And on the defense side, is it more likely to happen</p> <p>3 that you say I'm not on board with the case?</p> <p>4 A I don't know. I wouldn't think so. That doesn't</p> <p>5 seem to be the case, no, sir.</p> <p>6 Q Well, with only five defense cases, it would only</p> <p>7 take one for you to be at 20 percent, right?</p> <p>8 A Right.</p> <p>9 Q But you're not in a position to recall whether in</p> <p>10 any of those five you were not on board with the</p> <p>11 defense position?</p> <p>12 A No, sir, I've already testified to the fact that I</p> <p>13 was on board some of the time and not on board some</p> <p>14 of the time.</p> <p>15 Q But you couldn't give us a percentage?</p> <p>16 A No, sir.</p> <p>17 MR. REINGOLD: All right, it's 11:52.</p> <p>18 Is it okay if we take a ten-minute break and then</p> <p>19 we'll move on from there?</p> <p>20 THE WITNESS: Yes, sir.</p> <p>21 MR. REINGOLD: All right. Anybody</p> <p>22 have objections to that?</p> <p>23 MR. JAMISON: No, sounds good.</p> <p>24 MR. REINGOLD: See you at noon.</p> <p>25 (A break was taken at 11:52 a.m.)</p> <p style="text-align: center;">Page 67</p>	<p>1 ---</p> <p>2 (Record resumed at 12:01 p.m.)</p> <p>3 BY MR. REINGOLD:</p> <p>4 Q We're back on the record at noon and we will shift</p> <p>5 gears. In your own words, would you describe what</p> <p>6 your assignment was as an expert in this case?</p> <p>7 A I was asked at first about my feelings on the Static</p> <p>8 and how -- just basically that and then I was -- I</p> <p>9 wasn't told a lot about the case. I was told that</p> <p>10 there was some kind of question involving a registry</p> <p>11 and that part of that related to the Static and so I</p> <p>12 was asked to write a report addressing certain</p> <p>13 aspects of the Static that I have found to be</p> <p>14 problematic in recent years in the process of</p> <p>15 consulting with people about writing up something.</p> <p>16 Q Do you know anything about the individual plaintiffs</p> <p>17 in the case?</p> <p>18 A No, sir.</p> <p>19 Q Do you know what relief the Plaintiffs are</p> <p>20 seeking?</p> <p>21 A No, sir.</p> <p>22 Q And did all of the information that you got come</p> <p>23 from Counsel?</p> <p>24 A Yes, sir.</p> <p>25 Q Did you read any documents in the case before or</p> <p style="text-align: center;">Page 68</p>

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<p>1 after agreeing to become an expert, not counting any</p> <p>2 expert reports?</p> <p>3 A No, sir.</p> <p>4 Q So you didn't read the Complaint or any of the other</p> <p>5 filings in the case?</p> <p>6 A Not that I recall, no, sir. I don't remember</p> <p>7 reading anything about the case prior to agreeing to</p> <p>8 be an expert.</p> <p>9 Q You don't know anything about the Plaintiffs in the</p> <p>10 case. Are you aware, I take it you're not, but I'll</p> <p>11 ask you, are you aware that one of the Plaintiffs</p> <p>12 never committed a sexual offense, was never found to</p> <p>13 have any sexual motivation for his crime and yet</p> <p>14 he's on the registry for life?</p> <p>15 A No, sir, I didn't know that.</p> <p>16 Q Are you aware that another Plaintiff was found by a</p> <p>17 court in her home state not to be a dangerous</p> <p>18 predator, her sentence was reduced and she was</p> <p>19 required to register just once a year for ten years</p> <p>20 but when she moved to Michigan to be closer to her</p> <p>21 family, she became a lifetime registrant?</p> <p>22 A No, sir.</p> <p>23 Q Are you aware that another Plaintiff in the case</p> <p>24 went to an over 18 club, wound up having sex with a</p> <p>25 girl to used to fake ID to get into the club but who</p> <p style="text-align: center;">Page 69</p>	<p>1 is nevertheless on the registry for life even though</p> <p>2 the couple are married and have three children</p> <p>3 together?</p> <p>4 MR. JAMISON: I'm going to object to</p> <p>5 this line of questioning, assumes facts not in</p> <p>6 evidence.</p> <p>7 MR. REINGOLD: You may answer.</p> <p>8 A No, sir.</p> <p>9 BY MR. REINGOLD:</p> <p>10 Q Are you aware that according to our preliminary</p> <p>11 data, more than half of the people on Michigan's</p> <p>12 registry who are out in the community committed</p> <p>13 crimes other than CSC 1 or 2, that's Criminal Sexual</p> <p>14 Conduct 1 or 2, the most serious sexual offenses?</p> <p>15 A No, sir.</p> <p>16 Q Are you aware that in that same group, our</p> <p>17 preliminary data shows that more than half of them</p> <p>18 are over age 50?</p> <p>19 A No, sir.</p> <p>20 Q Are you aware that despite those figures, about 93</p> <p>21 percent of Michigan registrants are on the registry</p> <p>22 for 25 years or for life?</p> <p>23 A No, sir.</p> <p>24 Q And you know, I assume, that but for time on the</p> <p>25 registry and the frequency of reporting, everyone on</p> <p style="text-align: center;">Page 70</p>
<p>1 the registry is subject to the same duties and</p> <p>2 restrictions because it's a one size fits all law?</p> <p>3 A I do now. I didn't before.</p> <p>4 Q Okay. What that means is that the duties and</p> <p>5 restrictions that were designed to control and</p> <p>6 monitor the most dangerous offenders like the sexual</p> <p>7 violent predators that you've worked with so much</p> <p>8 and people who committed the horrific stranger,</p> <p>9 kidnap, rape, murders of children for whom the laws</p> <p>10 are named, those duties and restrictions also are</p> <p>11 applied to the lowest level offenders?</p> <p>12 MR. JAMISON: Objection, misstates</p> <p>13 the law.</p> <p>14 MR. REINGOLD: You can answer.</p> <p>15 A Are you asking me if I knew that?</p> <p>16 BY MR. REINGOLD:</p> <p>17 Q I'm asking -- yeah, did you know that?</p> <p>18 A No, sir.</p> <p>19 Q You know it now?</p> <p>20 A Yes, sir.</p> <p>21 Q Okay. Were you provided any materials to consider</p> <p>22 in writing your report?</p> <p>23 A Yes, sir.</p> <p>24 Q What was that?</p> <p>25 A The experts -- the other experts' reports,</p> <p style="text-align: center;">Page 71</p>	<p>1 Dr. Hanson -- sorry.</p> <p>2 Q H-a-n-s-o-n. All right, I've called up -- let me</p> <p>3 share my screen again. This should be marked as</p> <p>4 Exhibit 4. Is this a copy of the report that you</p> <p>5 submitted in the case?</p> <p>6 A Yes.</p> <p>7 Q And I take it you wrote it?</p> <p>8 A Yes.</p> <p>9 Q Was anyone else involved in writing it?</p> <p>10 A No.</p> <p>11 Q Anyone help you to write it?</p> <p>12 A Yes.</p> <p>13 Q And who is that?</p> <p>14 A Well, helped by finding research articles for me</p> <p>15 about specific things but not in the writing.</p> <p>16 Q So you had a research assistant who did some work</p> <p>17 for you?</p> <p>18 A Yes, sir.</p> <p>19 Q But no one told you what to write?</p> <p>20 A No, sir.</p> <p>21 Q Are all of the opinions that you intend to offer in</p> <p>22 the case included in your report?</p> <p>23 A Unless I'm asked something on the stand that isn't</p> <p>24 in the report, then I would say yes, sir.</p> <p>25 Q Haven't left anything out?</p> <p style="text-align: center;">Page 72</p>

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<p>1 A No, sir.</p> <p>2 Q Does your report also include a complete statement</p> <p>3 of the basis and reasons for your opinion?</p> <p>4 A Yes, sir.</p> <p>5 Q Haven't left anything out as to that?</p> <p>6 A No, sir.</p> <p>7 Q And you've identified all the documents that support</p> <p>8 your opinions?</p> <p>9 A Yes, sir.</p> <p>10 Q Are you familiar with the works of scholars in the</p> <p>11 field?</p> <p>12 A Yes, sir.</p> <p>13 Q Let me ask you about the Plaintiffs' experts.</p> <p>14 Before this case, were you familiar with</p> <p>15 Dr. Hanson's work?</p> <p>16 A Yes.</p> <p>17 Q All right. Is it true that his work is widely</p> <p>18 cited?</p> <p>19 A Yes.</p> <p>20 Q Fair to say he's considered one of the top</p> <p>21 authorities in his field?</p> <p>22 A Yes.</p> <p>23 Q Fair to say his area overlaps only a little bit with</p> <p>24 yours?</p> <p>25 A Yes.</p> <p style="text-align: center;">Page 73</p>	<p>1 Q You've done no work on whether registries are</p> <p>2 effective in reducing offending?</p> <p>3 A No, sir.</p> <p>4 Q Before coming into this case, were you familiar with</p> <p>5 the work of Elizabeth Letourneau?</p> <p>6 A Yes, sir.</p> <p>7 Q Is it fair to say her work is widely cited?</p> <p>8 A Yes, sir.</p> <p>9 Q Fair to say she's considered one of the top</p> <p>10 authorities in her field?</p> <p>11 A Yes, sir.</p> <p>12 Q Are you familiar with the literature and scholarship</p> <p>13 in her area, meaning child sexual offenses and</p> <p>14 recidivism?</p> <p>15 A Yes, sir.</p> <p>16 Q Did you know the work of Kelly Socia?</p> <p>17 A I've read some of her articles. I'm less familiar</p> <p>18 with her body of work in general.</p> <p>19 Q It's actually a he, but that's fine.</p> <p>20 A Sorry.</p> <p>21 Q Fair to say that his work is also widely cited?</p> <p>22 A I believe it is, yes, sir.</p> <p>23 Q And fair to say he, too, is highly regarded in his</p> <p>24 field?</p> <p>25 A Yes, sir. I'm sure he is.</p> <p style="text-align: center;">Page 74</p>
<p>1 Q Are you familiar with the work of Dr. James</p> <p>2 Prescott?</p> <p>3 A To about the same degree, yes, sir.</p> <p>4 Q Same degree as Socia?</p> <p>5 A Yes, sir.</p> <p>6 Q Fair to say his work is widely cited?</p> <p>7 A Yes, sir.</p> <p>8 Q Fair to say he's considered one of the top</p> <p>9 authorities in his field?</p> <p>10 A Yes, sir.</p> <p>11 Q All right. And this is a field that's quite</p> <p>12 different from yours; isn't that true?</p> <p>13 Let me put it a different way. At</p> <p>14 least in this case, what he's writing about is the</p> <p>15 effect of registry laws, whether they work or not?</p> <p>16 A Yes, sir.</p> <p>17 Q And that's not something that you either know about</p> <p>18 or have written about?</p> <p>19 A Correct.</p> <p>20 Q Okay. You don't know whether registries are</p> <p>21 effective in reducing sexual offending?</p> <p>22 A I know that the research has been pretty consistent</p> <p>23 that they're not effective.</p> <p>24 Q Okay. How about Kristen Zgoba, are you familiar</p> <p>25 with her work at all?</p> <p style="text-align: center;">Page 75</p>	<p>1 A To a lesser degree.</p> <p>2 Q Do you know if her work is widely cited?</p> <p>3 A I'm not sure. I'm less familiar with -- I'm less</p> <p>4 familiar with her.</p> <p>5 Q So you wouldn't know that she's one of the top</p> <p>6 authorities in her field?</p> <p>7 A Right.</p> <p>8 Q Okay. A couple of questions about the two leading</p> <p>9 experts, Hanson and Letourneau. Both testified in</p> <p>10 their depositions that they got interested in their</p> <p>11 research fields from their clinical work with</p> <p>12 victims of sexual assault. Both wanted to reduce</p> <p>13 sexual offending. That was and is their primary</p> <p>14 motivation for doing the work that they do,</p> <p>15 according to them. Do you have any reason to doubt</p> <p>16 them in that regard?</p> <p>17 A No, sir.</p> <p>18 Q Over time both became critical of certain public</p> <p>19 policies like registries that based on their</p> <p>20 research and the research of others did little or</p> <p>21 nothing to reduce sexual offending or to increase</p> <p>22 public safety while preventing low risk offenders</p> <p>23 from reintegrating into society and all at great</p> <p>24 governmental expense. Do you have any reason to</p> <p>25 doubt them in that regard?</p> <p style="text-align: center;">Page 76</p>

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<p>1 A No, sir.</p> <p>2 Q All right, let's switch gears again and let me ask</p> <p>3 you some questions about your report. In your</p> <p>4 report, it's true that you were critical of</p> <p>5 Dr. Hanson's carelessness, let's say, in the use of</p> <p>6 certain terms; is that right?</p> <p>7 A Yes.</p> <p>8 Q You felt like he would occasionally use the term</p> <p>9 reoffending, which can mean different things to</p> <p>10 different people, with recidivism which can also</p> <p>11 mean different things to different people?</p> <p>12 A Yes.</p> <p>13 Q Okay. He has since written a rebuttal to your</p> <p>14 report in which he made an effort to clarify his use</p> <p>15 of the term; is that right?</p> <p>16 A I have no idea. I've not heard of that or seen</p> <p>17 it.</p> <p>18 Q You haven't seen the rebuttal report?</p> <p>19 A No. I would like to.</p> <p>20 Q Well, he made clear that when he's talking about</p> <p>21 observed recidivism rates, he's talking about people</p> <p>22 being caught. Is that the definition that you would</p> <p>23 subscribe to?</p> <p>24 A I just think it's a lot more nuanced than that. I</p> <p>25 mean caught doesn't mean convicted.</p> <p style="text-align: center;">Page 77</p>	<p>1 Q Let me ask a different question. When people have a</p> <p>2 sexual conviction and they are then later arrested,</p> <p>3 charged or convicted of a new offense, would you</p> <p>4 agree that the new offense is recidivism or observed</p> <p>5 recidivism?</p> <p>6 A Yes, sir.</p> <p>7 Q And so that's an appropriate term to use when</p> <p>8 somebody has already had a sexual offense conviction</p> <p>9 and then gets caught in the sense of meaning a new</p> <p>10 arrest, a new charge or a new conviction?</p> <p>11 A Yes, sir.</p> <p>12 Q And the problem arises if someone refers to that as</p> <p>13 reoffending because reoffending can also mean</p> <p>14 undetected reoffending, right?</p> <p>15 A Yes, sir.</p> <p>16 Q So he says that when he's talking about undetected</p> <p>17 offending or reoffending, he's talking about events</p> <p>18 that don't result in any kind of criminal justice</p> <p>19 processing or records, that is, there would be no</p> <p>20 arrest, no charge and no conviction. Is that a fair</p> <p>21 use of the term offending or reoffending or</p> <p>22 undetected offending or undetected reoffending?</p> <p>23 A Yes, sir.</p> <p>24 Q And if he's made that clear, does that satisfy the</p> <p>25 objection that you had before?</p> <p style="text-align: center;">Page 78</p>
<p>1 A No. Because I think the problem is that he has not</p> <p>2 done that for a long time and I think it's been a</p> <p>3 slow encroachment and I think that now we have an</p> <p>4 entire field of people who are using these terms</p> <p>5 interchangeably and they're using an instrument that</p> <p>6 just was a long time the gold standard and --</p> <p>7 Q But he's now saying if there was confusion in my</p> <p>8 report about the terms that I used, which I thought</p> <p>9 for my normal audience of other social scientists</p> <p>10 and judges and lawyers were clear by their context,</p> <p>11 if he's saying if there was a lack of clarity, I'm</p> <p>12 making it clear now, and so far you said -- so far</p> <p>13 you have agreed that the terms that he has clarified</p> <p>14 accurately describe what he wants them to describe.</p> <p>15 A Right, and I think that's a great start but I</p> <p>16 think --</p> <p>17 Q Okay. All right. Thank you. So what that means is</p> <p>18 if the only knowledge of an alleged new offense is,</p> <p>19 say, by neighbors and their knowledge of the offense</p> <p>20 wouldn't make it into any official criminal justice</p> <p>21 database, that would be an example of undetected</p> <p>22 offending, right?</p> <p>23 A Yes.</p> <p>24 Q Okay. He also clarified that the observed rates,</p> <p>25 that means again rates based on official criminal</p> <p style="text-align: center;">Page 79</p>	<p>1 justice system records, are valid indicators of</p> <p>2 proven reoffending, he said that even if some of the</p> <p>3 people might never be convicted or might even later</p> <p>4 be exonerated. Do you agree with that?</p> <p>5 A Yes.</p> <p>6 Q You do agree with that. That was yes? Sorry.</p> <p>7 A That was a yes.</p> <p>8 Q Okay, I didn't mean to talk over you. So recidivism</p> <p>9 equals observed reoffending, arrest, charge or</p> <p>10 conviction?</p> <p>11 A Yes.</p> <p>12 Q Okay. And it's true that the Static-99 only deals</p> <p>13 with official law enforcement records, right?</p> <p>14 A Yes.</p> <p>15 Q So anything coming out of the Static-99 can only</p> <p>16 have to do with original convictions followed by</p> <p>17 arrest, charge or conviction because it doesn't ask</p> <p>18 about or measure anything else, true?</p> <p>19 A True.</p> <p>20 Q All right. By the same token, when someone like you</p> <p>21 talks about reoffending, you're typically talking</p> <p>22 about something that is undetected and unknown and</p> <p>23 that can only be guessed at, right?</p> <p>24 A That's part of it but I think the detected ones are</p> <p>25 also reoffending. I think reoffending is all</p> <p style="text-align: center;">Page 80</p>

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<p>1 inclusive whereas recidivism is what we agreed to</p> <p>2 earlier.</p> <p>3 Q So you're willing to use reoffending as to both</p> <p>4 terms even though it causes confusion?</p> <p>5 A Yes, but I would make it --</p> <p>6 Q You can see -- I mean it confuses me just when you</p> <p>7 say that because now when you talk about</p> <p>8 reoffending, I don't know whether you mean and no</p> <p>9 one can know whether you mean all reoffending, that</p> <p>10 is, the official reoffending and the undetected</p> <p>11 reoffending or only one or the other; isn't that</p> <p>12 right?</p> <p>13 A No, I disagree with you.</p> <p>14 MR. JAMISON: Hold on, Doctor. I'm</p> <p>15 going to object. Paul, you're mischaracterizing his</p> <p>16 testimony. You're not allowing him to finish his</p> <p>17 answer.</p> <p>18 MR. REINGOLD: You can answer.</p> <p>19 A My answer to your question is no, I don't think it</p> <p>20 was confusing. I think that it was pretty clear.</p> <p>21 Reoffending means someone has offended sexually and</p> <p>22 they offend sexually again, whether we know about it</p> <p>23 or not. Reconviction, recidivism, recidivism is</p> <p>24 something different. Those are only the ones that</p> <p>25 happen that we know about. I don't know what's</p> <p style="text-align: center;">Page 81</p>	<p>1 unclear about that. I'm sorry.</p> <p>2 BY MR. REINGOLD:</p> <p>3 Q Well, it just strikes me that you criticized</p> <p>4 Dr. Hanson because he used both terms, he thought,</p> <p>5 in context that made the meaning perfectly clear and</p> <p>6 now you're saying you get to use a term in context</p> <p>7 where the meaning is just as unclear as his was.</p> <p>8 If he said recidivism and was somehow</p> <p>9 alluding to undetected reoffending, that would be</p> <p>10 wrong, and if you've used the word reoffending and</p> <p>11 it includes recidivism, some of the people just</p> <p>12 think you're going to be confused, right?</p> <p>13 A But how? Because you said it yourself. If he did</p> <p>14 that, then he would be wrong. If I did that, my</p> <p>15 groups are exclusive of one another. His groups are</p> <p>16 the wrong way. I'm saying reoffending is</p> <p>17 everything, whether we know about it or not. He's</p> <p>18 sayings recidivism and reoffending are the -- he's</p> <p>19 using them interchangeably and you cannot do that.</p> <p>20 There's a huge difference.</p> <p>21 Q No, he has corrected that.</p> <p>22 A Well, come on.</p> <p>23 Q Well, I'm saying to his audience of other people in</p> <p>24 the field and to his audience of lawyers and judges,</p> <p>25 in his view, the context was clear and yet you're</p> <p style="text-align: center;">Page 82</p>
<p>1 saying it's okay for you to use a similar term that</p> <p>2 will lead people uncertain as to your meaning and</p> <p>3 that doesn't strike me as fair.</p> <p>4 MR. JAMISON: Objection. Paul, how</p> <p>5 do you know what other people are going to believe</p> <p>6 based on Dr. Turner's definition? I don't even know</p> <p>7 that there's a question in there. Do you have a</p> <p>8 question for Dr. Turner?</p> <p>9 BY MR. REINGOLD:</p> <p>10 Q Dr. Turner, has someone who has been arrested</p> <p>11 reoffended?</p> <p>12 MR. JAMISON: Objection, the question</p> <p>13 is vague. Arrested for what?</p> <p>14 BY MR. REINGOLD:</p> <p>15 Q Arrested for -- if someone who has a sexual offense</p> <p>16 and has been arrested for a new sexual offense, has</p> <p>17 that person offended?</p> <p>18 A If we're talking about -- according to stats, if</p> <p>19 we're running a study, which is what we're talking</p> <p>20 about, then that person, if it's a rearrest study,</p> <p>21 that person would have been rearrested and that</p> <p>22 would count, whether he did it or not, as</p> <p>23 recidivism.</p> <p>24 Q What you're saying is if there's context and it's</p> <p>25 set in the context of the study, then it's clear,</p> <p style="text-align: center;">Page 83</p>	<p>1 right?</p> <p>2 A If it's made clear in the study, sure.</p> <p>3 Q And when we're talking about Static-99 studies,</p> <p>4 which only study official data, if someone says</p> <p>5 someone has reoffended, why shouldn't that mean</p> <p>6 reoffended within the context of the study?</p> <p>7 A Well, he uses the words to indicate what I'm using</p> <p>8 them to mean in his own writings, in his own manual</p> <p>9 he differentiates between that. I mean that's not</p> <p>10 really an argument or anything. I mean you're a</p> <p>11 very smart man but that's not a point that you can</p> <p>12 prove. He's made the difference, like he -- so what</p> <p>13 we have to do at this point is my concern is talk</p> <p>14 about the damage that has been done because of his</p> <p>15 use of that.</p> <p>16 Q And why isn't the damage --</p> <p>17 A By and large, that reoffending -- I mean no one will</p> <p>18 make the argument -- no one will make that argument.</p> <p>19 I don't even think he would make that argument.</p> <p>20 Q Why isn't the damage equally done when people on</p> <p>21 your side of the table refer to reoffending as if it</p> <p>22 includes every allegation of an offense? Isn't it</p> <p>23 true that if someone is arrested, you count that as</p> <p>24 a reoffense?</p> <p>25 MR. JAMISON: Objection, it's a</p> <p style="text-align: center;">Page 84</p>

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<p>1 compound question.</p> <p>2 A That's also misrepresentative of what I said.</p> <p>3 Reoffending is anything, whether we know about it or</p> <p>4 not. I mean it's that simple. That's what</p> <p>5 reoffending is. That's the definition if you look</p> <p>6 it up.</p> <p>7 BY MR. REINGOLD:</p> <p>8 Q All right. So someone who -- in your view, someone</p> <p>9 who is alleged to have committed a crime, has not</p> <p>10 been convicted, has not been proven beyond a</p> <p>11 reasonable doubt that he did it, has reoffended?</p> <p>12 A No, you're making my point for me, that's the</p> <p>13 problem. We're talking about reoffending as to</p> <p>14 what's actually happening as opposed to other things</p> <p>15 which are just a snapshot of someone that was</p> <p>16 accused or did do it or got caught or got convicted.</p> <p>17 That's a big difference. So you're making my point</p> <p>18 for me. He's being confusing by his intermixing of</p> <p>19 those where we need to call one thing what's red red</p> <p>20 and what's blue blue.</p> <p>21 Q But Dr. Turner, when people who are advocating on</p> <p>22 behalf of survivors talk about high recidivism --</p> <p>23 not high recidivism rates, high rates of undetected</p> <p>24 offending, part of what they're counting is offenses</p> <p>25 that we have no idea who did it, if it actually</p> <p style="text-align: center;">Page 85</p>	<p>1 occurred, if someone alleges an offense and it never</p> <p>2 happened, it's still going to be counted as</p> <p>3 reoffending, right?</p> <p>4 A Yes.</p> <p>5 Q And so there's an exaggeration going on in both</p> <p>6 directions.</p> <p>7 A You know, I guess you and I are just going to have</p> <p>8 to agree to disagree. I think my definitions are</p> <p>9 very, very clear. I'm not talking about something</p> <p>10 you can't prove or can't be proved or maybe it did</p> <p>11 or didn't. I'm talking about things that</p> <p>12 objectively, omnisciently did happen, those are</p> <p>13 reoffenses. That is a person that committed</p> <p>14 offenses, that got out and did something else. We</p> <p>15 will never know about all of those but to say that</p> <p>16 something that only studies things that ended in</p> <p>17 arrest, charge or conviction is representative of</p> <p>18 everything that happens is horribly misleading.</p> <p>19 Q Is it far be it for me to say that only the recorded</p> <p>20 arrests, charges and convictions encompass the full</p> <p>21 range of sexual offending? That's patent and</p> <p>22 Dr. Hanson knows it and Dr. Letourneau knows it and</p> <p>23 the Plaintiffs' lawyers know it.</p> <p>24 But it's a fact that when people</p> <p>25 count unknown offenses and unproven offenses,</p> <p style="text-align: center;">Page 86</p>
<p>1 there's an escalation as to the actual number; isn't</p> <p>2 that true? We don't know what the number is and</p> <p>3 then people say here's a number because someone</p> <p>4 alleged that something happened and we have no idea</p> <p>5 if it did or not in many cases or in some cases.</p> <p>6 A Yeah, I agree with what you're saying. I think</p> <p>7 we're saying the same thing.</p> <p>8 Q All right. Let's move on. And it's true that when</p> <p>9 we don't have hard data like we have in use of the</p> <p>10 Static-99, we wind up with quite wide variances in</p> <p>11 the estimation of what's happening; isn't that</p> <p>12 right?</p> <p>13 MR. JAMISON: Objection, the question</p> <p>14 is vague.</p> <p>15 BY MR. REINGOLD:</p> <p>16 Q I'll make it clearer. In defense expert</p> <p>17 Goodman-Williams' report, she cited articles, each</p> <p>18 of which had a different figure for how many women</p> <p>19 will report having been the victim of a serious</p> <p>20 sexual assault and the range was from one in seven</p> <p>21 to one in five to four out of five.</p> <p>22 A Okay.</p> <p>23 Q Isn't that what happens when we don't have data?</p> <p>24 MR. JAMISON: Objection, lack of</p> <p>25 foundation and the question is vague.</p> <p style="text-align: center;">Page 87</p>	<p>1 A I don't understand if she -- she is providing</p> <p>2 data -- I'm thinking of data in terms of doing a</p> <p>3 study. If she's interviewing and polling people,</p> <p>4 then that is data, so I don't understand your</p> <p>5 question, I'm sorry.</p> <p>6 Q Well, if the range of the data reported is from one</p> <p>7 in seven to four out of five, that's like from, you</p> <p>8 know, 13 percent or something to 80 percent. It</p> <p>9 might be data but it doesn't do anybody any good,</p> <p>10 right, we don't have a clue what the real answer is?</p> <p>11 MR. JAMISON: Objection, misstates</p> <p>12 the record.</p> <p>13 A I guess I would say I think some studies that are</p> <p>14 done well do a better job of that than others.</p> <p>15 BY MR. REINGOLD:</p> <p>16 Q And it also depends on the population that you're</p> <p>17 interviewing or that you're surveying, right?</p> <p>18 A Of course, yes, sir, lots of variables.</p> <p>19 Q Yeah. And it also depends on how you define the</p> <p>20 terms, what does sexual assault mean, something like</p> <p>21 that, you need to know that?</p> <p>22 A Yes, sir.</p> <p>23 Q And you need to know the length of time that we're</p> <p>24 looking at because that makes a huge difference?</p> <p>25 A Yes, sir.</p> <p style="text-align: center;">Page 88</p>

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<p>1 Q And unless you have all that information, the simple</p> <p>2 result from a survey doesn't get you very far,</p> <p>3 right?</p> <p>4 A You know, sometimes it does and sometimes it</p> <p>5 doesn't. It depends on all the variables that you</p> <p>6 just brought up.</p> <p>7 Q Yeah. And if the information is included in the</p> <p>8 study, we know a lot more, I would agree with that.</p> <p>9 Okay.</p> <p>10 So let's take a look at the Static-99</p> <p>11 itself. It's true, isn't it, that it's an</p> <p>12 actuarial-based instrument?</p> <p>13 A Yes.</p> <p>14 Q And what that means is it looks backward, right?</p> <p>15 A I didn't hear the end of what you said.</p> <p>16 Q I said it looks backward but if that's confusing,</p> <p>17 I'll give an example, okay?</p> <p>18 A No, sir, I understand. I literally didn't hear you</p> <p>19 but I heard it fine. Yes, sir, you're fine.</p> <p>20 Q So you agree it looks backward?</p> <p>21 A Yes, sir.</p> <p>22 Q And I always like to use the example of life</p> <p>23 insurance because that's one that everybody knows</p> <p>24 and it's easy to talk about and it's not as charged</p> <p>25 as sexually offending. So a good example of an</p> <p style="text-align: center;">Page 89</p>	<p>1 actuarial-type process is life insurance, right?</p> <p>2 A Yes, sir.</p> <p>3 Q And what it starts with is who died, yes?</p> <p>4 A Yes, sir.</p> <p>5 Q So what the insurance companies do is they start</p> <p>6 with large samples of dead people, yes?</p> <p>7 A You know, I'm just going to agree with you. I know</p> <p>8 what an actuarial is and I know that they use them</p> <p>9 at car insurance places but I don't know how they</p> <p>10 work. But I'll just say yes because you've been</p> <p>11 pretty straight with me so far, so I'll take your</p> <p>12 word for it.</p> <p>13 Q Well, what they're looking at is people who have</p> <p>14 died and then they go backwards and try to find</p> <p>15 statistically salient factors that correlate to</p> <p>16 early, middle or late death because I mean that's</p> <p>17 what life insurance is about, right?</p> <p>18 A Yes, sir.</p> <p>19 MR. JAMISON: I'm going to place a</p> <p>20 standing objection on the record so I don't have to</p> <p>21 object to every question, but Dr. Turner is not</p> <p>22 qualified as an expert in life insurance or</p> <p>23 actuarial tools related to life insurance and in</p> <p>24 that area.</p> <p>25 MR. REINGOLD: I understand that.</p> <p style="text-align: center;">Page 90</p>
<p>1 I'm just trying to get some basic agreement on what</p> <p>2 it is that the Static-99 does and sometimes having</p> <p>3 an example makes that easier.</p> <p>4 BY MR. REINGOLD:</p> <p>5 Q So if you're interested in life insurance and you</p> <p>6 want to figure out who's going to die early, who's</p> <p>7 going to die in the middle and who's going to die</p> <p>8 late so that you can set your rates accordingly,</p> <p>9 what you're looking for is the factors or features</p> <p>10 that are associated with longevity or the lack of,</p> <p>11 right?</p> <p>12 A Yes, sir.</p> <p>13 Q And then once you find those factors, you assign</p> <p>14 weight to them in relation to how statistically</p> <p>15 salient they are?</p> <p>16 A Yes, sir.</p> <p>17 Q And occasionally you might renorm the weighting of</p> <p>18 those factors if there are discernible changes over</p> <p>19 time?</p> <p>20 A Yes. Yes, sir.</p> <p>21 Q And to do that, you need reliable data, you have to</p> <p>22 actually know who died and you need reliable data on</p> <p>23 the salient features, that is, a person's health</p> <p>24 history, maybe their employment, criminal record,</p> <p>25 stuff like that, so that you can find the salient</p> <p style="text-align: center;">Page 91</p>	<p>1 factors that influence or that correlate with early,</p> <p>2 middle or late death?</p> <p>3 A Yes.</p> <p>4 Q In the end what we're talking about is if someone's</p> <p>5 a smoker as opposed to a non-smoker and smoking is a</p> <p>6 salient feature, that's going to be one of the</p> <p>7 factors on the instrument that measures who's</p> <p>8 probably going to die early or not, right?</p> <p>9 A Yes, sir, it's a factor analysis, yes, sir.</p> <p>10 Q All right. But in the virtue of this kind of</p> <p>11 method, what makes the method powerful is that it's</p> <p>12 tied to scientific reality; is that fair to say?</p> <p>13 A Yes.</p> <p>14 Q That is, you're working backward and it's the data</p> <p>15 that's telling you what are the salient factors,</p> <p>16 it's not anybody's hunch or anybody's judgment?</p> <p>17 A Yes, sir.</p> <p>18 Q And the only caveat when you get to the end of this</p> <p>19 is that what you've got is this kind of data doesn't</p> <p>20 tell you which individual person is going to die</p> <p>21 early, middle or late, all it does is put them into</p> <p>22 a risk pool of people who have the same factors or</p> <p>23 the same score and it tells you what the pool --</p> <p>24 what the risk is for that group of people, right?</p> <p>25 A Yes.</p> <p style="text-align: center;">Page 92</p>

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<p>1 Q All right. And that's exactly how the Static-99</p> <p>2 works, isn't it?</p> <p>3 A Yes.</p> <p>4 Q You start -- yes. Okay. So what you start with is</p> <p>5 somebody, a population that have committed a sexual</p> <p>6 offense and what you want to know is what are the</p> <p>7 factors that correlate with sexual recidivism?</p> <p>8 A Yes.</p> <p>9 Q Okay. So you do exactly the same thing, this is</p> <p>10 what Hanson did, what Hanson and his colleagues did</p> <p>11 in setting up the Static-99, fair to say, they look</p> <p>12 at a whole range of factors statistically to see</p> <p>13 what it is that most correlates to people who have a</p> <p>14 new arrest or charge or conviction down the road,</p> <p>15 right?</p> <p>16 A Yes.</p> <p>17 Q And then if you have that data, you can do</p> <p>18 refinements of your statistical models and figure</p> <p>19 out how much weight each of those gets, right?</p> <p>20 A Yes.</p> <p>21 Q And that's where we get the scale that is used to</p> <p>22 tally the score when you're running a Static-99</p> <p>23 test?</p> <p>24 A Yes.</p> <p>25 Q Okay. And when we're done, what it tells us is the</p> <p style="text-align: center;">Page 93</p>	<p>1 risk pool or the risk group that a person with a</p> <p>2 certain score is associated with, right?</p> <p>3 A Right.</p> <p>4 Q It doesn't tell us which people in that pool are</p> <p>5 actually going to reoffend because we can't know</p> <p>6 that, right?</p> <p>7 A Right.</p> <p>8 Q And there's always going to be some variation no</p> <p>9 matter how accurate the pools are; is that fair to</p> <p>10 say?</p> <p>11 A Yes.</p> <p>12 Q Okay. When you're scoring a Static-99, by</p> <p>13 definition the factors or at least most of the</p> <p>14 factors are static, that is, they're already --</p> <p>15 they've already occurred in the person's life and</p> <p>16 they aren't going to change; isn't that true?</p> <p>17 A Yes, sir.</p> <p>18 Q All right, let's take a look at them. I might have</p> <p>19 said earlier that your report was Exhibit 3 but I</p> <p>20 think it was actually Exhibit 4 because this tally</p> <p>21 sheet is Exhibit 3. So if we can correct the record</p> <p>22 in that regard. So is this -- does this look like a</p> <p>23 Static-99R tally sheet?</p> <p>24 A Yes, sir.</p> <p>25 Q And the kind of factors that we're looking at are</p> <p style="text-align: center;">Page 94</p>
<p>1 over on the left and there's ten of them, right?</p> <p>2 A Yes, sir.</p> <p>3 Q And when you're doing a Static-99 scoring, what</p> <p>4 you're basically doing is looking at each of the</p> <p>5 factors and then you've got either a binary or a</p> <p>6 slightly more than binary set of choices on the</p> <p>7 right side and you select as to each of the choices,</p> <p>8 right?</p> <p>9 A Yes, sir.</p> <p>10 Q And most of these are static because they happened</p> <p>11 in the past and they can't change?</p> <p>12 A Yes, sir.</p> <p>13 Q And when we're done, the only one that changes,</p> <p>14 actually, is the age at release from the index</p> <p>15 offense and that's going to change because it</p> <p>16 depends on when you get out, right?</p> <p>17 A Yes, sir.</p> <p>18 Q And when we're done, under the current scoring for</p> <p>19 the Static-99R, we get five categories or risk pools</p> <p>20 that people can fall into, low risk, below average</p> <p>21 risk, average risk, above average risk and well</p> <p>22 above average risk, right?</p> <p>23 A Yes, sir.</p> <p>24 Q And we can see statistically what the likelihood is</p> <p>25 that people will reoffend in the first five years</p> <p style="text-align: center;">Page 95</p>	<p>1 based on their Static score. Have you seen this</p> <p>2 sheet before?</p> <p>3 A I wouldn't say reoffend but I would say</p> <p>4 recidivism.</p> <p>5 Q You're right, sorry, will recidivate. Good catch.</p> <p>6 But this is what it shows.</p> <p>7 A You used it perfectly earlier and so I thought all</p> <p>8 right.</p> <p>9 Q No, no, I admire the effort. All right. But what</p> <p>10 this shows is the risk range for people with</p> <p>11 individual scores in the first -- in the first five</p> <p>12 years after release, right?</p> <p>13 A Yes.</p> <p>14 Q Okay. And it's a huge range, it means that people</p> <p>15 who have the best score, the lowest risk score, the</p> <p>16 day they get out, their range is .7 percent to two</p> <p>17 percent, right?</p> <p>18 A Yes.</p> <p>19 Q And if we go to the other end, score of nine or</p> <p>20 more, those people in the first five years are</p> <p>21 likely to recidivate or have a risk of recidivating</p> <p>22 at almost 23 percent to 37 percent?</p> <p>23 A Yes, sir.</p> <p>24 Q So what the instrument does and only thing that the</p> <p>25 instrument does is tell us when someone who has a</p> <p style="text-align: center;">Page 96</p>

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<p>1 sexual offense gets out, we can predict based on the</p> <p>2 risk pool that the score puts them into what their</p> <p>3 risk of recidivating is for certain periods of</p> <p>4 time?</p> <p>5 A Yes.</p> <p>6 Q Can't do anything more?</p> <p>7 A Correct.</p> <p>8 Q Never could, never will?</p> <p>9 A Amen.</p> <p>10 Q If Hanson misspoke and used the word reoffending as</p> <p>11 I did just now, it makes no sense because it can't</p> <p>12 possibly produce or tell us anything about the risk</p> <p>13 of undetected reoffending, right?</p> <p>14 A Right.</p> <p>15 Q And anybody who's an intelligent consumer of the</p> <p>16 Static-99 knows that?</p> <p>17 A I don't agree with that statement.</p> <p>18 Q You think there are people that misunderstand?</p> <p>19 A Yes.</p> <p>20 Q But it's unlikely, don't you think, that researchers</p> <p>21 in the field misunderstand?</p> <p>22 A No. Maybe researchers but less likely than</p> <p>23 practitioners, I'll give you that, sure.</p> <p>24 Q It's also true, isn't it, that if the Static-99 is</p> <p>25 going to be used for different populations, you have</p> <p style="text-align: center;">Page 97</p>	<p>1 to know whether or not it's normed for those</p> <p>2 populations; is that true?</p> <p>3 A Yes, sir.</p> <p>4 Q So for example, if law enforcement authorities or</p> <p>5 Corrections people in Norway want to use the</p> <p>6 Static-99, they can't be confident that the results</p> <p>7 they get will be the same results that were normed</p> <p>8 for Canadian and North American populations?</p> <p>9 A Agreed.</p> <p>10 Q So it would behoove them to then actually do a study</p> <p>11 and figure out if the norming is similar enough that</p> <p>12 A, it's reliable, B, it looks almost exactly like</p> <p>13 North America or if it's more or less effective,</p> <p>14 right?</p> <p>15 A Yes, sir.</p> <p>16 Q And then they can use it with confidence if it turns</p> <p>17 out that it is; is that true?</p> <p>18 A Yes, sir.</p> <p>19 Q Okay. So another one of your objections -- let me</p> <p>20 strike that. Hold on a second.</p> <p>21 So one of the populations that it's</p> <p>22 not normed for is women, right?</p> <p>23 A Right.</p> <p>24 Q And that's because, I gather, that there aren't</p> <p>25 enough women sexual offenders to norm it for; is</p> <p style="text-align: center;">Page 98</p>
<p>1 that your understanding?</p> <p>2 A Yes, sir.</p> <p>3 Q So it can't be used for women?</p> <p>4 A Right.</p> <p>5 Q And that means to the extent that there are women on</p> <p>6 the -- within the population of everybody who's</p> <p>7 committed a sex offense in Michigan, we don't</p> <p>8 have -- we can't use the Static-99 to predict what</p> <p>9 the recidivism rate is going to be?</p> <p>10 A Right.</p> <p>11 Q But we do know what recidivism rates for women are</p> <p>12 generally, right, sexual recidivism rates for women</p> <p>13 are generally?</p> <p>14 A I'm sure, yes.</p> <p>15 Q And you may not know but isn't it true that they are</p> <p>16 the equivalent to the very lowest rates for men?</p> <p>17 A That's my understanding, yes, sir.</p> <p>18 Q And that means it's easily possible that all women</p> <p>19 would be in the risk pool that would be the lowest</p> <p>20 risk pool for men?</p> <p>21 A No, I wouldn't say all. I would never say that. I</p> <p>22 would say most and prone to, yes, sir.</p> <p>23 Q All right, I'll agree with you on that. You might</p> <p>24 find some rare exception and all overstates the</p> <p>25 case. Again, I stand corrected. All right.</p> <p style="text-align: center;">Page 99</p>	<p>1 You would -- there's another</p> <p>2 population that within the United States it doesn't</p> <p>3 match up with as well as it does for most other</p> <p>4 people and that's Native Americans, right?</p> <p>5 A Right.</p> <p>6 Q And so when reporting Static-99 results of</p> <p>7 recidivism to the extent that there are Native</p> <p>8 Americans in the population being studied, it's</p> <p>9 probably better practice to drop a footnote that</p> <p>10 says as to Native Americans this may not be quite as</p> <p>11 accurate as it is for the rest of the population?</p> <p>12 A Yes, sir.</p> <p>13 Q That would be what you -- what perfect science would</p> <p>14 tell you?</p> <p>15 A Yes, sir.</p> <p>16 Q They would include it. Okay. You say that the</p> <p>17 Static-99 -- another of your objections is that the</p> <p>18 Static-99 isn't, to use your word, "normed" for</p> <p>19 unofficial, unreported or undetected reoffending and</p> <p>20 therefore "it cannot be generalized to sexual</p> <p>21 reoffenses that are not reported or prosecuted."</p> <p>22 That's on page 1 of your report. Is that</p> <p>23 accurate?</p> <p>24 A Yes.</p> <p>25 Q Let's bring it back up just so we have it if we want</p> <p style="text-align: center;">Page 100</p>

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<p>1 to look at it.</p> <p>2 THE WITNESS: May I ask a question,</p> <p>3 Mr. Reingold?</p> <p>4 MR. REINGOLD: Yes.</p> <p>5 THE WITNESS: Just in trying to think</p> <p>6 about things, do you think that we'll take a lunch</p> <p>7 break and come back? I don't know how much longer</p> <p>8 you think or -- just to get an idea of my schedule</p> <p>9 for the day. I have to pick up my son.</p> <p>10 MR. REINGOLD: It took us a lot</p> <p>11 longer to get through the C.V. than I expected and</p> <p>12 so I still have a ways to go. Maybe we'll do a</p> <p>13 lunch break, like half-hour at 1:30 if we need to,</p> <p>14 okay?</p> <p>15 THE WITNESS: Okay, thank you.</p> <p>16 Q So what I just said was that you -- I want to make</p> <p>17 sure I understood what you said because I'm not sure</p> <p>18 that I did. So hold on just a sec.</p> <p>19 THE WITNESS: You know what, while</p> <p>20 there's a bit of a pause, if we're going to take a</p> <p>21 lunch break in a half-hour, can we take like a</p> <p>22 five-minute restroom break right now?</p> <p>23 MR. REINGOLD: Sure.</p> <p>24 THE WITNESS: Thank you very much.</p> <p>25 MR. REINGOLD: See you in a few.</p> <p style="text-align: center;">Page 101</p>	<p>1 (A break was taken at 12:50 p.m.)</p> <p>2 - - -</p> <p>3 (Record resumed at 12:54 p.m.)</p> <p>4 BY MR. REINGOLD:</p> <p>5 Q Let's pick up where we just left off. I had just</p> <p>6 asked about something you said on page 1 of your</p> <p>7 report. You said "The Static-99 isn't normed for</p> <p>8 unofficial, unreported or undetected reoffending and</p> <p>9 therefore, it cannot be generalized to sexual</p> <p>10 reoffenses that are not reported or prosecuted." Is</p> <p>11 that a fair summary of your position?</p> <p>12 A Yes.</p> <p>13 Q Okay. When you say that, it isn't clear to me if</p> <p>14 you're talking about the actual factors chosen, that</p> <p>15 is the ten listed categories on the Static-99 and</p> <p>16 the weight given to them, or if you're talking only</p> <p>17 about the recidivism rates that the Static-99</p> <p>18 generates.</p> <p>19 A I'm talking about both of those factors.</p> <p>20 Q So as to the second, you're saying the factors that</p> <p>21 are on average five year, whatever, seven or nine or</p> <p>22 whatever, you know, percent recidivism rate, that</p> <p>23 that can't be -- that doesn't work for reoffending,</p> <p>24 we don't know, right?</p> <p>25 A Right.</p> <p style="text-align: center;">Page 102</p>
<p>1 Q Okay. So there's no disagreement about that. But I</p> <p>2 had questions about the first part. It seems to me</p> <p>3 if we're not looking at the recidivism rates but</p> <p>4 only at the chosen most salient factors themselves,</p> <p>5 isn't it true that those factors and the weight</p> <p>6 given to them should be the same both for officially</p> <p>7 detected future crime, that is, recidivism and for</p> <p>8 unofficial, undetected future crime? Shouldn't the</p> <p>9 risk factors that are salient be the same for</p> <p>10 both?</p> <p>11 A No, sir, and I'm glad you brought that up because</p> <p>12 that's really the crux of what my issues with the</p> <p>13 Static are.</p> <p>14 Q Well, I'm having trouble understanding it but let me</p> <p>15 ask another question. It's fair to say that we</p> <p>16 can't know anything about the unofficial,</p> <p>17 unreported, undetected crime because for the most</p> <p>18 part, we don't know who committed it, what the crime</p> <p>19 was or what salient factors the perpetrator might</p> <p>20 have had, right?</p> <p>21 A Right.</p> <p>22 Q So we're never going to be able to get a Static-99</p> <p>23 type instrument for undetected crime, I mean that's</p> <p>24 not possible?</p> <p>25 A Right.</p> <p style="text-align: center;">Page 103</p>	<p>1 Q But if someone committed a sex crime and was given</p> <p>2 the Static-99 and scored in a high risk pool for</p> <p>3 officially detected recidivism, isn't it fair to say</p> <p>4 he should likewise be viewed as high risk for future</p> <p>5 undetected reoffending or offending?</p> <p>6 MR. JAMISON: Object, the question is</p> <p>7 vague.</p> <p>8 MR. REINGOLD: You can answer.</p> <p>9 A I feel like I understand the question you're asking</p> <p>10 but may I try to just give a brief answer that will</p> <p>11 clear it up?</p> <p>12 Q Let me ask one other question first and see if we --</p> <p>13 if we really have a disagreement or not.</p> <p>14 It just seems to me that if someone</p> <p>15 scores in a high risk pool based on the Static-99</p> <p>16 factors, that's going to predict his future risk</p> <p>17 whether the ultimate crime is detected or not. Do</p> <p>18 you disagree with that?</p> <p>19 A I think I disagree with that, yes, sir, because I</p> <p>20 think that there's an issue of confounding variables</p> <p>21 and I think that what the Static-99 is measuring is</p> <p>22 what type of sex offenses are most likely to be</p> <p>23 brought to the attention of law enforcement and</p> <p>24 result in some kind of arrest, charge or conviction,</p> <p>25 not what types of reoffending is going on.</p> <p style="text-align: center;">Page 104</p>

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<p>1 So I think we're looking at things --</p> <p>2 I think we're looking at certain variables that</p> <p>3 speak to which sex offenses, subsequent sex offenses</p> <p>4 are most likely to be detected legally and</p> <p>5 sanctioned and which are just going to happen, and I</p> <p>6 think that that's looking at two different things</p> <p>7 and I think the questions on the Static are</p> <p>8 brilliant for getting at hey, which guys are more</p> <p>9 likely to end up back in prison for sex offending.</p> <p>10 There is nothing better out there for it and</p> <p>11 probably will never be.</p> <p>12 But to generalize and say that these</p> <p>13 specific things are risk factors for all offending,</p> <p>14 I think that's a stretch and a leap that has been</p> <p>15 made that shouldn't have been made and it's causing</p> <p>16 confusion in the field.</p> <p>17 Q But isn't it true that all offending starts out as</p> <p>18 officially unreported and undetected?</p> <p>19 A Yes, of course, by definition.</p> <p>20 Q And only after a period of time, whether it's</p> <p>21 minutes, hours, you know, months or years does it</p> <p>22 become officially reported and detected?</p> <p>23 A Yes.</p> <p>24 Q And I think it's true that nothing about the</p> <p>25 perpetrator or the crime changes in its movement</p> <p style="text-align: center;">Page 105</p>	<p>1 from undetection to detection?</p> <p>2 A Right. Yes. The offense as it goes.</p> <p>3 Q I mean the only difference between undetected and</p> <p>4 detected crime is that it's come to the attention of</p> <p>5 law enforcement, right?</p> <p>6 A And that has led to an arrest, if we're talking</p> <p>7 about the difference in reoffending.</p> <p>8 Q No, no, I meant that -- you're right. I mean again,</p> <p>9 you're correct and maybe inappropriately so and yes,</p> <p>10 that has led to an arrest.</p> <p>11 A And Mr. Reingold, the only reason I called that to</p> <p>12 attention is because, you know, this sort of funnel</p> <p>13 effect of offenses that happened, offenses that we</p> <p>14 know about, offenses that are just told to family,</p> <p>15 offenses that are told to law enforcement and then</p> <p>16 offenses that are told to law enforcement that lead</p> <p>17 to an arrest, and that's where we're starting to say</p> <p>18 this is how much sexual reoffending is going on and</p> <p>19 we're ignoring all of that, so that's the only</p> <p>20 reason I bring that up.</p> <p>21 Q Yes. But someone on my side of the table would say</p> <p>22 when you focus down that way, you're understating</p> <p>23 the actual -- the true risk because you're not</p> <p>24 taking into account all of the people who look like</p> <p>25 the full pool of people on the registry, right?</p> <p style="text-align: center;">Page 106</p>
<p>1 I mean we know, for example, that</p> <p>2 only 12 percent of offenders are stranger danger</p> <p>3 cases, right?</p> <p>4 A Right. I'm not seeing -- I didn't make the leap</p> <p>5 with you there. I'm sorry.</p> <p>6 Q Well, those are the ones who are most likely to be</p> <p>7 reported, right?</p> <p>8 A Yes. Yes.</p> <p>9 Q And yet they're a small percentage, ten, 12 percent</p> <p>10 of all people on the registry?</p> <p>11 A Right.</p> <p>12 Q So the effect works in both directions is what I'm</p> <p>13 trying to say.</p> <p>14 A But you know, another argument to that is that</p> <p>15 you're not only looking at -- and this is a point I</p> <p>16 hope I made in my report well, but you're not only</p> <p>17 looking at the confounding variable of what's going</p> <p>18 to get reported to law enforcement but you're</p> <p>19 looking at the confounding variable of what is going</p> <p>20 to be followed up with by law enforcement, what is</p> <p>21 going to be -- you know, what is going to lead them</p> <p>22 to do that, and I think some of the variables on the</p> <p>23 Static may be getting at that more so and I think</p> <p>24 one of those -- and I'm in the process of searching</p> <p>25 and reviewing it because as I said, some colleagues</p> <p style="text-align: center;">Page 107</p>	<p>1 of mine are working on something but what types of</p> <p>2 crimes are most likely to be followed up and taken</p> <p>3 seriously by law enforcement, is it stranger crimes</p> <p>4 versus incest crimes, is it male victims versus non.</p> <p>5 So it just opens up a whole barrel of</p> <p>6 questions that I don't even think Dr. Hanson, all</p> <p>7 due respect, has answered but we're allowing this</p> <p>8 instrument to just represent all kind of things that</p> <p>9 could potentially be very misleading and inaccurate.</p> <p>10 Q But the instrument itself doesn't claim any of that,</p> <p>11 right? I mean all it does is it's just based on the</p> <p>12 actuarial data, right? It's based on here's the</p> <p>13 recidivism and looking backward, these are the</p> <p>14 features and beyond that, we can't know anything,</p> <p>15 right?</p> <p>16 A Right.</p> <p>17 Q And as to the undetected offending, it may be</p> <p>18 steered this way, it may be steered that way but</p> <p>19 there's nothing even remotely similar to the ability</p> <p>20 of the Static-99 to tell us here's one thing we know</p> <p>21 for sure as opposed to here's a thousand other</p> <p>22 variables that we know nothing about?</p> <p>23 A Right. I agree and I think that's what the Static</p> <p>24 is great at is --</p> <p>25 Q All right.</p> <p style="text-align: center;">Page 108</p>

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<p>1 A That's what it does.</p> <p>2 Q I mean the only difference between undetected and</p> <p>3 detected crime is that it's come to the attention of</p> <p>4 law enforcement in the form of an arrest, I mean</p> <p>5 that's what we say?</p> <p>6 A Yes, sir. If we're comparing recidivism to</p> <p>7 reoffending, then yes, sir, that would be -- arrest</p> <p>8 would be the first way into that.</p> <p>9 Q And if every crime that becomes a recidivism was</p> <p>10 once an undetected crime, then by definition doesn't</p> <p>11 the likelihood that a person with a sex offense --</p> <p>12 doesn't the risk of a person with a sex offense of</p> <p>13 committing an undetected crime or a detected crime,</p> <p>14 shouldn't the risk be the same?</p> <p>15 A No, not at all.</p> <p>16 Q All right.</p> <p>17 A Because again, it's one of those things that they</p> <p>18 don't necessarily overlap both ways. All subsequent</p> <p>19 detected crimes started out as undetected crimes but</p> <p>20 not all undetected crimes share any space in space</p> <p>21 time with those that were detected. So you can't</p> <p>22 relate the two.</p> <p>23 Q So you're saying it would only predict the risk of</p> <p>24 undetected offenses that become detected offenses?</p> <p>25 A Of course.</p> <p style="text-align: center;">Page 109</p>	<p>1 Q And undetected offenses become detected offenses in</p> <p>2 a million different ways?</p> <p>3 A I agree with that.</p> <p>4 Q All right. I take it from what you've said that to</p> <p>5 the extent you'd quarrel with this at all, you</p> <p>6 wouldn't be saying the Static-99 risk pools, the one</p> <p>7 through five bear no correlation to the risk that</p> <p>8 someone will reoffend or recidivate, all you're</p> <p>9 saying is that there might be some imperfections?</p> <p>10 A Yes.</p> <p>11 Q There's no magical influence out there that would</p> <p>12 suggest that crimes that turn from undetected to</p> <p>13 detected have unique characteristics different from</p> <p>14 the ones that stay undetected for a long period of</p> <p>15 time or forever?</p> <p>16 A I don't know. That's part of the -- that's part of</p> <p>17 what I'm looking at, what makes a sex offense</p> <p>18 especially go undetected. I think there may be some</p> <p>19 information there and that's what I'm looking for in</p> <p>20 the literature. So I don't necessarily agree with</p> <p>21 that, no.</p> <p>22 Q Since the most serious crimes, the ones by</p> <p>23 strangers, you know, forceful rapes, rapes with</p> <p>24 physical injury, you agree that those are the ones</p> <p>25 that are more likely to be reported than sexual</p> <p style="text-align: center;">Page 110</p>
<p>1 assaults by known assailants without force, without</p> <p>2 physical injury and so on?</p> <p>3 A Yes.</p> <p>4 Q Isn't it fair to say then that if anything, the</p> <p>5 official detection rate is likely to be higher for</p> <p>6 people with past sexual offense arrests, charges or</p> <p>7 convictions?</p> <p>8 A I don't understand that connection.</p> <p>9 Q What I mean is that if somebody has a past sexual</p> <p>10 offense conviction and the cops are looking for a</p> <p>11 perpetrator and there's three suspects and one of</p> <p>12 them has an arrest, charge or conviction, isn't that</p> <p>13 person likely to get more police attention than the</p> <p>14 other two?</p> <p>15 A That makes sense.</p> <p>16 Q And that means there would be a higher chance of a</p> <p>17 new arrest, charge or conviction even if it turns</p> <p>18 out to be wrong?</p> <p>19 A I don't necessarily know that. I don't know if</p> <p>20 you're citing research or just asking for common</p> <p>21 sense, but I don't know what research says about</p> <p>22 that.</p> <p>23 Q Well, defense expert Goodman-Williams said we should</p> <p>24 expect anyone with a prior arrest or charge to get</p> <p>25 extra law enforcement attention and even more so for</p> <p style="text-align: center;">Page 111</p>	<p>1 someone with a prior sex offense conviction. Are</p> <p>2 you disagreeing with her?</p> <p>3 A No, but I'm asking if she's -- she said attention</p> <p>4 and then you extrapolated that to mean arrest and</p> <p>5 whatnot and that's where I stopped and said well, I</p> <p>6 need to see some data for that. But her saying that</p> <p>7 they get attention, that's why I said that sounds</p> <p>8 very reasonable.</p> <p>9 Q It's also true, isn't it, that -- and I alluded to</p> <p>10 this before, that whenever you use officially</p> <p>11 detected reoffending to include arrests and charges,</p> <p>12 it means there's some overcounting that's going on</p> <p>13 in the sense that -- if we're looking at actual</p> <p>14 culpability?</p> <p>15 A Are you referring to the fact that some people are</p> <p>16 falsely arrested and falsely charged?</p> <p>17 Q Yes.</p> <p>18 A Yes, I would agree with that, that that happens but</p> <p>19 on a far, far, far statistically less significant</p> <p>20 scale than going undetected or unconvicted for an</p> <p>21 offense, but yes, it does happen.</p> <p>22 Q And lots of those don't go -- you know, there might</p> <p>23 be an arrest and it doesn't go further simply</p> <p>24 because there's not enough evidence to go forward</p> <p>25 with the case, right?</p> <p style="text-align: center;">Page 112</p>

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<p>1 A Sometimes, yes, sir.</p> <p>2 Q In fact, a lot of them do that; isn't that true?</p> <p>3 A It happens sometimes. There's lots of reasons that</p> <p>4 that happens, sure.</p> <p>5 Q But you're the one who's saying it's a tough road to</p> <p>6 get from accusation to conviction, right?</p> <p>7 A I don't think I ever said it was a tough road. I</p> <p>8 said there's just places where statistically things</p> <p>9 plateau because you're not progressing from one tier</p> <p>10 to the next.</p> <p>11 Q But your report said something like only three</p> <p>12 percent of cases that --</p> <p>13 A Right.</p> <p>14 Q -- come to the attention wind up with a conviction,</p> <p>15 right?</p> <p>16 A No, no, no. No, sir, not -- no, sir.</p> <p>17 Q Clarify for me. Sorry.</p> <p>18 MR. JAMISON: Paul, can you point him</p> <p>19 to that section of his report that you're referring</p> <p>20 to?</p> <p>21 MR. REINGOLD: I might be able to.</p> <p>22 A We're talking about all offenses, undetected</p> <p>23 offenses and detected offenses, and then we're</p> <p>24 talking about what percentage of those result in a</p> <p>25 conviction and it's actually around 1.3, 1.4</p> <p style="text-align: center;">Page 113</p>	<p>1 percent. So that's what I'm talking about there.</p> <p>2 But what I mean is that --</p> <p>3 BY MR. REINGOLD:</p> <p>4 Q No, I just want to clarify that. I thought you were</p> <p>5 talking about three percent of the reported cases.</p> <p>6 A No, sir.</p> <p>7 Q All right, that was not clear to me.</p> <p>8 A Yeah.</p> <p>9 Q All right. Of the reported cases, do you know what</p> <p>10 percent gets to conviction?</p> <p>11 A I do. But not -- I don't have it in front of me.</p> <p>12 But there's a tier, it's reported to law</p> <p>13 enforcement, it's arrested and charged, it's gone</p> <p>14 through the D.A., it's resulted in -- you know, it</p> <p>15 hasn't been argued down to a non-sexual offense or</p> <p>16 something and it results in a very small percentage</p> <p>17 but I don't remember that exact percentage. I'm</p> <p>18 sorry.</p> <p>19 Q And unless or until we get to beyond a reasonable</p> <p>20 doubt, at least in our system of justice, people who</p> <p>21 don't get there are considered not to have committed</p> <p>22 the crime, right?</p> <p>23 A Right.</p> <p>24 Q All right, let's -- I just want to take a short look</p> <p>25 at your APOD article. Is that okay?</p> <p style="text-align: center;">Page 114</p>
<p>1 A Of course.</p> <p>2 Q Let me first -- let's see. All right, this is</p> <p>3 Exhibit 6, which is Analysis of Patterns of Denial</p> <p>4 on Males Accused of Sexual Offending. So correct me</p> <p>5 if I'm wrong but essentially here you created an</p> <p>6 instrument that in some respects is similar to the</p> <p>7 99, to the Static-99; is that right?</p> <p>8 A In a statistical sense to some degree, yes, sir. In</p> <p>9 the analysis of it. Sorry.</p> <p>10 Q Yeah. And what you've done is you've got a</p> <p>11 12-factor scale to identify if a suspect's pattern</p> <p>12 of denial as to committing a crime matches patterns</p> <p>13 of other known or accused offenders, right?</p> <p>14 A Yes, sir.</p> <p>15 Q And as I understand it, because of your law</p> <p>16 enforcement connections, you had access to data that</p> <p>17 almost no one else was likely to get?</p> <p>18 A Right.</p> <p>19 Q And that included recorded interviews of three kinds</p> <p>20 of people, there were those who denied some or all</p> <p>21 culpability but were later convicted and believed in</p> <p>22 fact to be guilty?</p> <p>23 A Yes, sir.</p> <p>24 Q And there were those who admitted most or all</p> <p>25 culpability and were later convicted and are</p> <p style="text-align: center;">Page 115</p>	<p>1 believed to have been actually guilty?</p> <p>2 A Yes, sir.</p> <p>3 Q And the third was those who denied all culpability</p> <p>4 and were later exonerated, whether pre or post</p> <p>5 conviction, and they were exonerated because there</p> <p>6 was very strong proof, either DNA or somebody else's</p> <p>7 confession or videotape, and they are believed to be</p> <p>8 actually innocent, right?</p> <p>9 A Yes, sir.</p> <p>10 Q So your shorthand terms were guilt deniers, guilt</p> <p>11 admitters and falsely accused folks?</p> <p>12 A Yes, sir.</p> <p>13 Q And what you were doing was especially useful</p> <p>14 because when the recorded interviews were taken, we</p> <p>15 didn't know what the people's status was, right?</p> <p>16 A Correct.</p> <p>17 Q We only find that out later. And the interviews</p> <p>18 were real, this was cops interviewing real</p> <p>19 perpetrators in various stages of denial or</p> <p>20 admission?</p> <p>21 A Yes, sir.</p> <p>22 Q And you looked at that and kind of did not</p> <p>23 statistically but sort of statistically what are the</p> <p>24 factors in the speech patterns of these people that</p> <p>25 appeared to be most significant once we know which</p> <p style="text-align: center;">Page 116</p>

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<p>1 group they're actually in, right?</p> <p>2 A Sure. Right.</p> <p>3 Q And the scale was an interesting one. You've got a</p> <p>4 bunch of different things and most of it has to do</p> <p>5 with facts that the person may use to turn the</p> <p>6 conversation or, you know, blaming another person,</p> <p>7 degrading the victim, claiming to be uninterested in</p> <p>8 sex, all of those kinds of things, and what you're</p> <p>9 able to do with that is then create a tool that says</p> <p>10 here are some factors and if you're seeing these, it</p> <p>11 can help you to determine whether somebody is in</p> <p>12 group one, group two or group three or really groups</p> <p>13 one or two or group three; is that right?</p> <p>14 A Yes, sir. And group two was primarily for the</p> <p>15 statistical analysis, which were robust. You said</p> <p>16 that it wasn't really statistically shown but it was</p> <p>17 in fact, but that is just shown for an additional</p> <p>18 measuring point, but what the scale actually</p> <p>19 differentiates between is people who are responding</p> <p>20 in a manner that would indicate, you know, denial</p> <p>21 about something that actually happened versus people</p> <p>22 that are denying something that truly didn't</p> <p>23 happen.</p> <p>24 Q Yeah, okay. So it's really one and three that</p> <p>25 you're measuring?</p> <p style="text-align: center;">Page 117</p>	<p>1 A Yes, sir, it's based on a statistical analysis of</p> <p>2 three but it's comparing to -- it's fine, yeah.</p> <p>3 Everything you said has been fine. I'm sorry.</p> <p>4 Q And when you use the scale like this, again kind of</p> <p>5 like the Static-99, you can't be sure that this</p> <p>6 particular suspect is in fact lying or telling the</p> <p>7 truth, right, it's more putting them into a risk</p> <p>8 pool that their likelihood is increased if they --</p> <p>9 of guilt if they show these features and their</p> <p>10 likelihood of guilt is decreased if they don't?</p> <p>11 A Yes, sir, in terms of comparative analysis to the</p> <p>12 two groups, yes, sir.</p> <p>13 Q Yeah. Okay. And the reason you can't tell if it's</p> <p>14 this suspect individually is because for example, it</p> <p>15 might be a nervous nelly, it might be somebody</p> <p>16 who's guilty of something else and so feels the need</p> <p>17 to deny everything, those kinds of problems, right?</p> <p>18 A And no instrument is perfect and I'm just having --</p> <p>19 recommending that people use it as a tool just to</p> <p>20 kind of check their own reaction to things, but by</p> <p>21 no means should it be anything that a decision to</p> <p>22 prosecute or anything is based on.</p> <p>23 Q Right. And even if it's something that wasn't out</p> <p>24 there and that's a new tool in law enforcement's</p> <p>25 toolbox to help them assess suspects who are willing</p> <p style="text-align: center;">Page 118</p>
<p>1 to be interviewed about their connection to a</p> <p>2 crime?</p> <p>3 A Yes, sir.</p> <p>4 Q It's different from the Static-99 in that it doesn't</p> <p>5 rely on any officially recorded hard data, the</p> <p>6 equivalent of arrests, charges or convictions,</p> <p>7 right?</p> <p>8 A Correct. Correct.</p> <p>9 Q All right. There's nothing comparable to the</p> <p>10 observed rates that we have with the Static-99?</p> <p>11 A Right.</p> <p>12 Q So it's based on watching the interviews and having</p> <p>13 grad students or other trained observers record the</p> <p>14 patterns and they get reduced to the 12 features and</p> <p>15 again, you can have people scoring each interview in</p> <p>16 comparison to those 12 features, right?</p> <p>17 A Yes, sir.</p> <p>18 Q The hardest thing about your study is that it's hard</p> <p>19 to validate, right? I mean the great thing about</p> <p>20 things like the Static-99 is non-developers can go</p> <p>21 out and run the same kind of study in a different</p> <p>22 location, different pool, everything else and get</p> <p>23 validation, yes?</p> <p>24 A Right.</p> <p>25 Q And in a different -- in addition, you can norm it</p> <p style="text-align: center;">Page 119</p>	<p>1 against, as you said, different kinds of</p> <p>2 populations, you know, does it work as well for</p> <p>3 blacks as for whites, Norwegians as for Americans,</p> <p>4 that sort of thing, you can figure that out?</p> <p>5 A Right.</p> <p>6 Q And for yours, it's much harder to do that because</p> <p>7 you're actually not going to get the real answer as</p> <p>8 to who is what, you know, you may never know or if</p> <p>9 you get the answer, it might not be in 25 years out</p> <p>10 when they're exonerated, right?</p> <p>11 A Right. The only thing you could do to expedite that</p> <p>12 would be a validation study where someone would have</p> <p>13 access to their own interviews and they would have</p> <p>14 people code them blind like I had my researchers do</p> <p>15 and put out a study saying hey, here's our sample</p> <p>16 and here's how well it works with this sample and</p> <p>17 that's actually in the process of being done by</p> <p>18 another organization right now.</p> <p>19 Q Yeah. That would be a great way to do it. But what</p> <p>20 I'm saying is what sets the Static-99 apart and</p> <p>21 makes it so useful is that it can be validated to</p> <p>22 different populations, it could be replicated, even</p> <p>23 the same study can be done again and again and it</p> <p>24 has been, right?</p> <p>25 A Right, but you could do that with the APOD as well,</p> <p style="text-align: center;">Page 120</p>

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<p>1 you can find normative data on females or juveniles</p> <p>2 or you can norm it on non-sexual offenses. That</p> <p>3 could be done as well though granted you'd have to</p> <p>4 have access to that data and it's much more easy to</p> <p>5 get access to the type of data that Dr. Hanson and</p> <p>6 his colleagues have used and the people that</p> <p>7 revalidate that instrument have used.</p> <p>8 Q All right. It's also true that in the APOD article,</p> <p>9 you at least paid a little bit of attention to</p> <p>10 polygraphs, right?</p> <p>11 A Right.</p> <p>12 Q And you noted that, and I've highlighted here,</p> <p>13 "While polygraphs certainly are very useful as an</p> <p>14 interview tool, it's not a crystal ball and cannot</p> <p>15 reveal to the examiner precisely what the nature of</p> <p>16 a lie might be, thus calling a polygraph machine a</p> <p>17 lie detector is somewhat of a misnomer and one that</p> <p>18 can be somewhat of a disservice to the field." Did</p> <p>19 I read that accurately?</p> <p>20 A Yes, sir.</p> <p>21 Q And you also say -- or you cite the National Academy</p> <p>22 of Sciences 2002 which reports a validity finding of</p> <p>23 a polygraph of 61 percent, right?</p> <p>24 A Yes, sir.</p> <p>25 Q And that's just a little bit over the level of</p> <p style="text-align: center;">Page 121</p>	<p>1 chance, right?</p> <p>2 A Correct.</p> <p>3 Q And you note that only 18 of the United States allow</p> <p>4 the admission of polygraph evidence?</p> <p>5 A Yes.</p> <p>6 Q Which means that the studies that use a polygraph to</p> <p>7 try to get a feel for or to estimate the number of</p> <p>8 undetected past sexual offenses of very high risk</p> <p>9 offenders, like serially convicted offenders in</p> <p>10 maximum security prisons or people in mental</p> <p>11 hospitals, we shouldn't take the lie detector</p> <p>12 results certainly as gospel, right?</p> <p>13 A Correct.</p> <p>14 Q In fact, it's fair to say they're just a little bit</p> <p>15 over chance?</p> <p>16 A Well, that was -- you know, that was one study.</p> <p>17 There have been other studies that put it up around</p> <p>18 .7 and 80 percentage but, you know, I was just</p> <p>19 pointing out the fact that we don't -- that we're</p> <p>20 still in the process of a field of putting things</p> <p>21 together to help us in this area.</p> <p>22 Q Right. And of the 22 states -- or 32 states that</p> <p>23 don't allow the admission of a polygraph, that's</p> <p>24 because they think it doesn't meet the standards of</p> <p>25 what the law sets for what can be used in court?</p> <p style="text-align: center;">Page 122</p>
<p>1 A Yes, sir.</p> <p>2 MR. JAMISON: Objection, lack of</p> <p>3 foundation.</p> <p>4 BY MR. REINGOLD:</p> <p>5 Q Lastly in this article, again I think back on the</p> <p>6 first page, you said that --</p> <p>7 MR. JAMISON: Can you share what</p> <p>8 you're looking at because if you're --</p> <p>9 MR. REINGOLD: I thought I was. Oh,</p> <p>10 gosh.</p> <p>11 MR. JAMISON: If you're asking</p> <p>12 questions, he needs to --</p> <p>13 MR. REINGOLD: No, no, I apologize.</p> <p>14 I've done that many times and I'm sorry. Hold on a</p> <p>15 second. Now I'm -- now I lost my full screen, so</p> <p>16 I -- total apologies. I was rolling it up. Is</p> <p>17 everybody here or not?</p> <p>18 MR. JAMISON: Yeah, Dr. Turner</p> <p>19 stepped away for a minute. Looks like you're on</p> <p>20 Exhibit 6 now, right?</p> <p>21 MR. REINGOLD: Yeah. We'll wait.</p> <p>22 Yes, sorry. The problem for me is that I have a</p> <p>23 left screen where I'm putting the document up and</p> <p>24 the share screen is in my lower right on the other</p> <p>25 screen, and so I say here it is, take a look at it</p> <p style="text-align: center;">Page 123</p>	<p>1 and then I don't hit the share screen. So yes, all</p> <p>2 the quotes, I had them highlighted and I thought you</p> <p>3 were all seeing them.</p> <p>4 A I just know the vertical like it's my child, so as</p> <p>5 soon as you said it, I recognized it.</p> <p>6 BY MR. REINGOLD:</p> <p>7 Q Yes, you were there. So one of the things you say</p> <p>8 is "Despite the somewhat instinctive belief that</p> <p>9 denial of sexual offending must speak to an</p> <p>10 increased risk of reoffending, meta-analytic studies</p> <p>11 by Hanson and Morton-Borgoun (2005) indicate no</p> <p>12 significant rate relationship between the two." Did</p> <p>13 I read that accurately?</p> <p>14 A Yes, sir.</p> <p>15 Q So in effect, what you're saying there is that even</p> <p>16 though we all might expect that people who deny</p> <p>17 having committed a crime that we later figure out,</p> <p>18 you know, they in fact committed, we would expect</p> <p>19 them to have higher rates of reoffending, right? It</p> <p>20 would feel like part of their personality trait,</p> <p>21 right?</p> <p>22 A Yes, sir.</p> <p>23 Q But when people who know what they're doing, people</p> <p>24 like Hanson actually go out and measure it, it turns</p> <p>25 out not to be true, right, that's what happened</p> <p style="text-align: center;">Page 124</p>

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<p>1 here?</p> <p>2 A Right.</p> <p>3 Q And again, what I'm trying to make the point of,</p> <p>4 isn't this precisely the virtue of research that's</p> <p>5 based on reliable hard data, that is, some of the</p> <p>6 things that we assume to be true and that seem</p> <p>7 perfectly self-evident turn out not to be supported</p> <p>8 by research science?</p> <p>9 A That in general is true here. The rest of the</p> <p>10 paragraph, I talk about why I think there's a</p> <p>11 problem with that research finding. But in general,</p> <p>12 yes, there are things that we might assume to be</p> <p>13 true as humans that, you know, we're shocked to find</p> <p>14 out across research studies are not true. That's</p> <p>15 the core of social psychology, yes, sir.</p> <p>16 Q And that's like the earth is flat and the sun</p> <p>17 circles the earth?</p> <p>18 A Yes, sir.</p> <p>19 Q And I have the sense that -- and this might be my</p> <p>20 own bias, but I have the sense that because you've</p> <p>21 spent most of your time around the most serious and</p> <p>22 violent sexual offenders that you have this kind of</p> <p>23 intuitive feel that detected recidivism is</p> <p>24 especially low compared to undetected reoffending</p> <p>25 rates of the worst offenders whom you know. That</p> <p style="text-align: center;">Page 125</p>	<p>1 might not be a fair criticism but it can feel that</p> <p>2 way from someone like me listening to you.</p> <p>3 Instead, if you look at all people</p> <p>4 convicted of sexual offenses, isn't it true that the</p> <p>5 majority -- I told you, I don't know if you know it,</p> <p>6 but I said from our data, it shows the majority of</p> <p>7 whom every year are convicted of lower level crimes,</p> <p>8 it's true, isn't it, that it turns out that most of</p> <p>9 the full population of sex offenders are never</p> <p>10 arrested, charge or convicted of another sexual</p> <p>11 offense?</p> <p>12 A Yes. That was a really loaded question, though.</p> <p>13 You said something that you think I believed and</p> <p>14 then you asked me a couple of questions, so...</p> <p>15 MR. JAMISON: I was going to say</p> <p>16 Paul, you -- I mean for purposes of clarity, that</p> <p>17 was a compound -- or objection, that's a compound</p> <p>18 question, it was sort of a leading question. To</p> <p>19 have a clear transcript, I'd just ask you to ask</p> <p>20 concise questions.</p> <p>21 MR. REINGOLD: You're right. I was</p> <p>22 trying to set the context so that my question would</p> <p>23 make sense to you, that's all.</p> <p>24 A I'm aware of that. I don't think you were being</p> <p>25 slippery. I think that I just lost my ability to</p> <p style="text-align: center;">Page 126</p>
<p>1 follow the connection and I'm sorry.</p> <p>2 BY MR. REINGOLD:</p> <p>3 Q And even though most sexual offenders are never</p> <p>4 going to be arrested, charged or convicted of</p> <p>5 another offense, that doesn't mean that some and</p> <p>6 especially the most violent, predatory, stranger</p> <p>7 danger type felons may be serially offending at high</p> <p>8 rates and getting away with it?</p> <p>9 A Yes, sir.</p> <p>10 MR. JAMISON: Paul, we talked about</p> <p>11 taking a break sometime around 1:30. Is this a</p> <p>12 logical point to --</p> <p>13 MR. REINGOLD: Yeah, let's take half</p> <p>14 an hour here and the second part will go faster,</p> <p>15 okay?</p> <p>16 MR. JAMISON: Do you have an idea of</p> <p>17 how much longer you have to go?</p> <p>18 MR. REINGOLD: Let's see. If we come</p> <p>19 back at 2, I think we have a hope for 2 -- for 3.</p> <p>20 MR. JAMISON: So it will be done by 3</p> <p>21 potentially?</p> <p>22 MR. REINGOLD: Potentially. I'll do</p> <p>23 what I can, okay?</p> <p>24 MR. JAMISON: Okay.</p> <p>25 MR. REINGOLD: All right. Did you</p> <p style="text-align: center;">Page 127</p>	<p>1 want to make lunch break shorter? We can do 20</p> <p>2 minutes.</p> <p>3 THE WITNESS: Yeah, I can do that. I</p> <p>4 don't need a lot of time.</p> <p>5 MR. REINGOLD: Let's do that.</p> <p>6 (A break was taken at 1:33 p.m.)</p> <p>7 ---</p> <p>8 (Record resumed at 2:02 p.m.)</p> <p>9 BY MR. REINGOLD:</p> <p>10 Q Let's pick up back on the record. I had made a</p> <p>11 point about the utility of research and there's</p> <p>12 another one that relates to that. It's true,</p> <p>13 Dr. Turner, that one of the things that Hanson's</p> <p>14 become known for in the last seven or eight years is</p> <p>15 the idea that if sex offenders are released into the</p> <p>16 community and don't recidivate, that their risk</p> <p>17 level drops, I think, way more even than he</p> <p>18 expected. Are you aware of that research?</p> <p>19 A Yes.</p> <p>20 Q It's what he calls the time free in the community</p> <p>21 calculation; is that right?</p> <p>22 A Yes, sir.</p> <p>23 Q All right. And since you understand it, I'm looking</p> <p>24 for places to cut here. I won't go into great</p> <p>25 detail but basically if you have somebody who scores</p> <p style="text-align: center;">Page 128</p>

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<p>1 at a ten percent risk of recidivating within five</p> <p>2 years, for each five years that that person is out</p> <p>3 and does not recidivate, I'm using your words, the</p> <p>4 risk that they find drops at 50 percent for every</p> <p>5 five years. So is that your understanding?</p> <p>6 A Yes, sir. I need to reclose my office door. I'm so</p> <p>7 sorry.</p> <p>8 Q That's okay.</p> <p>9 A I'm not even going to mute. Just one second.</p> <p>10 Q Okay.</p> <p>11 A Okay, sorry. Excuse me.</p> <p>12 Q Sure. So what it means is if a person started at</p> <p>13 ten percent, then at the end of five years, their</p> <p>14 risk rate would be down to five percent and at the</p> <p>15 end of ten years, they'd be down to two and a half</p> <p>16 percent. Is that your understanding of what he's</p> <p>17 saying?</p> <p>18 A Yes, sir.</p> <p>19 Q And the result is that at some point, all offenders</p> <p>20 will eventually reach a risk level that's</p> <p>21 indistinguishable from two other groups who are not</p> <p>22 on the registry and those are A, males in the</p> <p>23 general population and B, people who committed</p> <p>24 non-sex offenses but not -- they had a non-sex</p> <p>25 offense conviction but not a sexual offense</p> <p style="text-align: center;">Page 129</p>	<p>1 conviction. Is that your understanding?</p> <p>2 A Yes.</p> <p>3 Q And you've criticized his report when he gave --</p> <p>4 when he was talking about this and used the examples</p> <p>5 for not taking into account the age of the people</p> <p>6 being released, that is, you said at page 8 -- and</p> <p>7 I'll pull it back up. Let me screen share. Let's</p> <p>8 see.</p> <p>9 You criticized him that the estimate</p> <p>10 of lifetime rates was misleading because there are</p> <p>11 material differences between someone released 20</p> <p>12 years out who was 20 and someone released 20 years</p> <p>13 out who was 55. Is that accurate?</p> <p>14 A Right.</p> <p>15 Q Okay. And I think he thought and I as a reader</p> <p>16 thought you were suggesting that the person released</p> <p>17 at age 20 would be more likely to be alive and in</p> <p>18 good health 20 years later than the individual</p> <p>19 released at age 55 who at that point is now going to</p> <p>20 be 75, right?</p> <p>21 A Right.</p> <p>22 Q And that's based on the well-known statistical</p> <p>23 studies across all crimes that people age out over</p> <p>24 time, that is, the older you get, at some point the</p> <p>25 less likely you are to reoffend?</p> <p style="text-align: center;">Page 130</p>
<p>1 A Yes.</p> <p>2 Q And I think you were saying that there would be a</p> <p>3 material difference between the 40-year-old and the</p> <p>4 75-year-old which Hanson was not taking into</p> <p>5 account. Is that what your criticism was intended</p> <p>6 to do?</p> <p>7 A No, sir.</p> <p>8 Q All right. I think that's how he read it and that's</p> <p>9 how I read it. If that's not right, tell me what</p> <p>10 your intention was. What were you criticizing?</p> <p>11 A It's close to what you said but it's taking what you</p> <p>12 said and identifying that as a confounding variable</p> <p>13 and then explaining why. So I won't repeat</p> <p>14 everything that you just said because everything you</p> <p>15 just said is of course true, you're just doing math,</p> <p>16 but the idea is that the use of the term lifelong --</p> <p>17 Q No, no, we're going to get to there in a minute.</p> <p>18 Let me get to there in a minute. All I want to know</p> <p>19 is is it fair to say that your view was that the</p> <p>20 55-year-old could still be dangerous where the</p> <p>21 75-year-old would not or would have a higher risk?</p> <p>22 A No, sir, that's not what I'm referring to.</p> <p>23 Q Okay. The reason that I ask is because he thought</p> <p>24 that you might have misunderstood what he was saying</p> <p>25 because it turns out that younger individuals --</p> <p style="text-align: center;">Page 131</p>	<p>1 that although younger individuals are higher risk</p> <p>2 than older individuals at the time of release, what</p> <p>3 their study found was that the pattern of release</p> <p>4 was the same, that is, after 20 years of detected,</p> <p>5 you know, offense-free living, the likelihood of a</p> <p>6 new sexual offense was as small for the individuals</p> <p>7 who were released when they were 20 as it was for</p> <p>8 the individuals who were released when they were</p> <p>9 55?</p> <p>10 A No, sir, I did not misunderstand that and that's</p> <p>11 wherein the issue was.</p> <p>12 Q So the point you're making then is that there's no</p> <p>13 such thing as lifetime -- zero lifetime recidivism;</p> <p>14 is that right?</p> <p>15 A No, sir, that's not right.</p> <p>16 Q All right, you need to tell me then.</p> <p>17 A I'm sorry?</p> <p>18 Q I said can you explain what your objection was?</p> <p>19 A Yes. First of all, lifelong is arbitrary and I</p> <p>20 think it denotes in the layperson lifelong meaning</p> <p>21 lifelong, so I think that it's -- I think Dr. Hanson</p> <p>22 has a lot of stroke and people listen to what he</p> <p>23 says and I think he needs to be careful when he</p> <p>24 assigns terms like low, average, high, moderate,</p> <p>25 lifelong to graphs and charts and that why don't we</p> <p style="text-align: center;">Page 132</p>

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<p>1 just call it 20 years because someone who gets out 2 of prison at 38 years old is very different from 3 someone that gets out of prison at 78 years old just 4 in terms of how much time they have in which they 5 could potentially reoffend, and for them all to get 6 lumped into a group of 20 years and call that 7 lifelong, so you might be considering 38-year-olds 8 as already having shown, you know, so to speak, or 9 representing a level of risk and you could be 10 comparing that to someone that, you know, doesn't 11 have that long or has more health problems. 12 There's just a lot of confounding 13 variables again, just a lot of other things that I 14 think could be explaining some of these things that 15 we're seeing in research and it all boils back to me 16 to the fact that we're dealing with a crime that is 17 notoriously underreported, and I know you haven't 18 asked me that and I don't mean to -- I think I've 19 shown I'm not trying to give speeches, I'm trying to 20 be succinct but we're not talking about bank robbery 21 or murder where we're in the 90 percent of -- you 22 know, there's very little difference between what's 23 undetected and what's detected. 24 Q Right. I'm going to stop you there because I don't 25 want to talk about that. We'll get there. But you</p> <p style="text-align: center;">Page 133</p>	<p>1 don't quibble then with his point that the 2 recidivism rate at the end of 20 years will be 3 comparable to or even lower than the detected rate 4 of sexual offending in the male population or in the 5 population of people who committed a previous 6 offense but not a sex offense? 7 A Right. 8 Q And so then the question is and the question, I 9 think, that's the core of this case, at least for 10 the Plaintiffs, is the idea that we put and keep 11 people on registries when their risk of 12 reoffending -- sorry, recidivating is the same as or 13 lower than vast numbers of people in the community 14 who have exactly the same statistical risk. Do you 15 understand that's why we would view that as a 16 problem? 17 A Yes. 18 MR. JAMISON: Object. Well, it's a 19 late objection but I object for lack of foundation. 20 A I'm strictly saying that I understand how you are 21 explaining how you see that as a problem. Yes, I 22 understand your view. 23 BY MR. REINGOLD: 24 Q Okay. And none of this means that no one will ever 25 commit a detected offense after the 20 years, only</p> <p style="text-align: center;">Page 134</p>
<p>1 that the rate of those new offenses after 20 years 2 is virtually identical or lower than known lifetime 3 rates? 4 MR. JAMISON: Objection, that's 5 vague. 6 A Yes, sir, I understand that Dr. Hanson thinks I 7 might have misunderstood his findings but I did 8 not. 9 BY MR. REINGOLD: 10 Q But that didn't answer my last question. It doesn't 11 mean that no one will ever commit a detected offense 12 thereafter, what it means is that the rate of those 13 new offenses after 20 years is the same from 20 14 years on and lower than those other two 15 populations? 16 A Yes. 17 Q Let's take a look at -- this will be a quick look at 18 Exhibit 7, which my guess is you're going to be -- 19 oh, no, I think I got the wrong one. Hold on a 20 minute. I'm supposed to be stop sharing first. 21 Are you aware of the Special Report 22 from the U.S. Justice Department of 2019 by Alper 23 and Durose about the Recidivism of Sex Offenders 24 Released from State Prison: A 9-year Follow-Up? 25 A Yes, sir, but not enough to speak about it</p> <p style="text-align: center;">Page 135</p>	<p>1 without -- it's been a long time and I -- yes, sir. 2 Q That's why I have it open in front of us and this, I 3 believe, was marked as Exhibit 7. So this was a 4 study where they looked at 20,000 people who were 5 released from prison in 2005 of 30 different states 6 and the purpose of the study was to compare actual 7 recidivism rates, meaning they actually used just 8 arrests, so it was the lowest of the possible 9 standards compared to other kinds of offenders. 10 In Table 2, which I've lit up for you 11 and highlighted, gives us some of that information. 12 On the vertical axis is all prisoners and then the 13 offense for which they were convicted, and then 14 going across you see the recidivism rates based on 15 arrests for the categories of offenses that were 16 included in the study. 17 I should tell you the definition of 18 assault focused on violent or forcible crimes or 19 crimes where consent was not possible due to age or 20 disability, so it would include many offenses with 21 minors. 22 The rape or assault included forcible 23 intercourse, forcible sodomy or penetration with an 24 object, forcible or violent sexual acts, 25 non-forcible sexual acts with a minor and</p> <p style="text-align: center;">Page 136</p>

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<p>1 non-forcible sexual acts with someone who couldn't 2 give consent.</p> <p>3 So what it shows, and I'll just so 4 you can see what we're talking about, all prisoners 5 had a 83 percent recidivism rate over the nine-year 6 period after their release. If we go to each 7 category, we see that sexual offenders had 7.7 8 recidivism rate; robbery offenders had a 16.8 9 recidivism rate; assaultants, non-sexual assaultants 10 had a 44 percent rate; property offenders had a 63.5 11 percent rate; and drug offenders a 60.4 percent 12 rate.</p> <p>13 It's fair to say from this, isn't it, 14 that people with sexual convictions have a 15 significantly lower recidivism rate for a subsequent 16 crime that's similar to the one for which they were 17 incarcerated than every other discrete group of 18 offenders except for murderers. Homicide, it was 19 2.7, is that fair to say?</p> <p>20 A Yes.</p> <p>21 Q And people with sexual convictions have the lowest 22 recidivism rate for any post release violent crime 23 of all discrete -- of all discrete groups of 24 offenders, including murderers; is that fair to 25 say?</p> <p style="text-align: center;">Page 137</p>	<p>1 A Say that last one again?</p> <p>2 Q Let me read it a separate way.</p> <p>3 A I mean I don't disagree with this. This chart makes 4 sense.</p> <p>5 Q Okay.</p> <p>6 A Yeah. We're talking about recidivism. Their 7 recidivism rate is much lower. I mean they're 8 reported at an insanely lower rate than any of these 9 other offenses, so this just kind of proves my 10 point.</p> <p>11 Q Well, it may or may not.</p> <p>12 A That's actually my point. I'm just saying this 13 still doesn't -- I don't look at this and think oh. 14 I mean this is what I would expect to see.</p> <p>15 Q Well, put another way, it finds that non-sexual 16 assaultive offenders are rearrested for a new 17 non-sexual assault at six times the rate that sexual 18 offenders are, right?</p> <p>19 A Yes.</p> <p>20 Q And drug offenders rearrested at eight times the 21 rate that sexual offenders are arrested for a new 22 sexual offense.</p> <p>23 A Right.</p> <p>24 Q I mean you talked about public distortion, right? 25 If you said to a member of the public who has a</p> <p style="text-align: center;">Page 138</p>
<p>1 higher recidivism rate, meaning new arrest, new 2 charge and new conviction, this would come as big 3 news to people, don't you think?</p> <p>4 MR. JAMISON: Objection, lack of 5 foundation.</p> <p>6 A I think what you would need to do is have a 7 statistic by that that showed how frequently those 8 crimes are reported because I think what you would 9 see is that rape and sexual assault are among the 10 least reported, and so that confounds the whole 11 table, but it's a recidivism study and that's 12 interesting data and important.</p> <p>13 BY MR. REINGOLD:</p> <p>14 Q Well, let's talk about the sexual -- I mean 15 recidivism for some of the other categories. Let's 16 talk about drug crimes for a minute. I'm moving 17 ahead with my notes, so let me see if I can find 18 here.</p> <p>19 We know, don't we, that drug crimes 20 in the United States are rampant?</p> <p>21 A Yes.</p> <p>22 Q I checked and I believe in the most recent year, a 23 hundred thousand people had died from drug 24 overdoses. That sound fair?</p> <p>25 A I would have no reason to refute that, no, sir.</p> <p style="text-align: center;">Page 139</p>	<p>1 Q And that doesn't count the hundreds of thousands or 2 maybe millions of people who are addicted to 3 drugs?</p> <p>4 A Right.</p> <p>5 Q And all of those people or the great majority of 6 those people get their drugs not legally but 7 illegally, right?</p> <p>8 A I would say that that's fair.</p> <p>9 Q And it's also true that if you look at street drugs, 10 sales on the street or any drug sales, isn't it true 11 that every time a drug is sold, there's actually two 12 crimes that are committed, not one, because both the 13 seller and the buyer are guilty of a crime?</p> <p>14 A Yes.</p> <p>15 Q The seller of the crime is distribution or sale and 16 for the buyer, it's possession because all these 17 drugs are illegal to have, right?</p> <p>18 A Yes, sir.</p> <p>19 Q So whatever the total number of crimes are, unlike 20 sexual offenses, whatever the total number of crimes 21 are when we're talking about drug crimes, if it's at 22 the bottom end where they're distributed, which is 23 where the biggest number of crimes would be, it's 24 actually doubled, right?</p> <p>25 A Well, I think you could make that point, yes, sir.</p> <p style="text-align: center;">Page 140</p>

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<p>1 I just shy away from saying statistically yes, 2 double it because that's where my brain goes. But 3 yeah, that could include both parties in that 4 number, yes, sir. 5 Q And we know that in this type of crime, unlike your 6 examples, which are good ones, murderers and bank 7 robbery where we almost always know that the crime 8 has been committed, it's easy to detect, right, with 9 murder there's a dead body? 10 A Yes, sir. 11 Q And where there's a dead body, it triggers the 12 attention of law enforcement, somebody's got to 13 write a death certificate and it gets referred to 14 the police if a dead body has bullet holes in it? 15 A Yes, sir. 16 Q But drugs are the exact opposite, right? Drugs are 17 a willing buyer and a willing seller both of whom 18 have committed crimes who are never going to report 19 the offense, right? 20 A Yes. 21 Q So when you say on page 1 of your report that sexual 22 offending is unique in how underreported it is, 23 isn't it at least pretty likely that drug offending 24 probably dwarfs the underreporting of sexual 25 offending?</p> <p style="text-align: center;">Page 141</p>	<p>1 A I don't know that I'm not familiar with that 2 research. 3 Q Well, put another way, I mean most sexual offenders, 4 I mean at some point, they're only able to offend 5 when the opportunity presents or, you know, if 6 they're sexually active, it's not as if they can -- 7 unlike drug sales, they're probably not going to 8 have sex 20 times a day, right? 9 A But sexual offenses also occur in private, they're 10 not occurring on street corners. There's a lot of 11 other things that play here. 12 Q There may be. I'm still saying one person can't 13 commit 20 crimes in a day. 14 A I've known a couple of people -- no, I'm picking. 15 I'd agree with that. 16 Q And so to hold out simply the underreporting as the 17 be all and end all of sexual offending doesn't 18 really work. Isn't it true that property crimes 19 also, many, many property crimes are underreported 20 or unreported? 21 A I don't know the statistics on that. 22 Q Well, I mean I think you could do an informal survey 23 or ask yourself. I mean I've had my house broken 24 into two times and my car broken into two times and 25 I think I made one police report and decided it</p> <p style="text-align: center;">Page 142</p>
<p>1 wasn't worth it. Ever experienced anything like 2 that? 3 A No, sir, I've never had my home or my car broken 4 into. 5 Q Okay. But we know that there's huge underreporting 6 in those kinds of crimes, you wouldn't deny that? 7 A There may be but I doubt that it approaches the 8 level that's been found across studies of rape and 9 sexual assault. 10 Q Well, that may in large part be only because that's 11 the one that's been studied, right, the others 12 haven't been studied, we have to infer? 13 A Right. Maybe -- I'm not familiar with whether or 14 not there's research about disclosure and reporting 15 of property crimes much in the same way. 16 Q Yes, there's not an advocacy group out there for 17 survivors of property crimes, right? 18 A Right. So I don't know. 19 Q Yeah. And I think that matters because we make 20 assumptions about sexual offenses that may or may 21 not be true and I just gave you an example of drugs 22 that makes clear sexual offending and overcount or 23 undercounting is not unique, the word that you use, 24 unique means there's nothing else like it. Let's 25 also --</p> <p style="text-align: center;">Page 143</p>	<p>1 MR. JAMISON: Yeah, I'm going to 2 object to your characterization of how he -- his use 3 of the term unique and how, Paul, you may understand 4 it to the extent you're implying that you have the 5 same definition. 6 MR. REINGOLD: All right, objection 7 noted. 8 BY MR. REINGOLD: 9 Q Let's also look at the rearrest rate of the sexual 10 assault folks for any offense. They got rearrested 11 at the rate of 67 percent, right? 12 A Yes, sir. 13 Q So does that mean they're especially skilled at 14 avoiding detection for rape and sexual assault but 15 they're not skilled at detection when it comes to 16 any other offense? I mean it's not as if they were 17 eluding detection in all these other categories and 18 offenses, right? 19 A I think it may very well be the case that sex 20 offenders are more skilled at eluding sexual 21 offenses than other types of crimes. I can 22 absolutely see how that could be the case. 23 Q But we also established earlier today that if 24 somebody has a previous sexual offense, they're more 25 likely to be detected because if they come within</p> <p style="text-align: center;">Page 144</p>

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<p>1 the range of being a suspect, they're going to be</p> <p>2 the first suspect, right?</p> <p>3 MR. JAMISON: Objection,</p> <p>4 mischaracterize and misstate the previous testimony.</p> <p>5 THE WITNESS: Am I supposed to</p> <p>6 answer?</p> <p>7 MR. JAMISON: You can if you</p> <p>8 understand it.</p> <p>9 A I don't believe, sir, with all due respect that that</p> <p>10 was a correct characterization of what I said</p> <p>11 earlier.</p> <p>12 May we take a restroom break?</p> <p>13 MR. REINGOLD: Yes.</p> <p>14 THE WITNESS: Thank you. It was the</p> <p>15 lunch. I'm sorry.</p> <p>16 MR. REINGOLD: That's all right.</p> <p>17 (A break was taken at 2:29 p.m.)</p> <p>18 - - -</p> <p>19 (Record resumed at 2:33 p.m.)</p> <p>20 Q We're back on the record. The only other thing I</p> <p>21 wanted to pointed out about drugs, this is not a</p> <p>22 victimless crime, right, the last sale is the one</p> <p>23 that -- or the last step in the distribution stage</p> <p>24 or in the distribution process is the one that puts</p> <p>25 the drugs into the hands or into the arms of the</p> <p style="text-align: center;">Page 145</p>	<p>1 addict victims, right?</p> <p>2 A Yes, sir.</p> <p>3 Q Yet nine years out of custody, drug offenders are</p> <p>4 still being caught 60.4 percent of the time and</p> <p>5 sexual offenders are only being caught in the way</p> <p>6 that we have earlier identified 7.7 percent of the</p> <p>7 time. Given the undercounting of drugs makes it</p> <p>8 hard to blame the difference on underreporting,</p> <p>9 doesn't it?</p> <p>10 A I guess when I look at what I see from what you're</p> <p>11 saying is when I look at the rape/sexual assault and</p> <p>12 you look at how many of them came back for that, it</p> <p>13 dwarfs the percentages of the other crimes and so</p> <p>14 that -- you know, I'm trying to look for an effect</p> <p>15 that large in any of the other columns.</p> <p>16 Q I didn't understand you. Came back from what?</p> <p>17 A So that came back for -- so maybe I'm reading it</p> <p>18 wrong, I don't know, but the rape/sexual assault</p> <p>19 offenders came back for rape and sexual assault 7.7</p> <p>20 percent of the time.</p> <p>21 Q Yes.</p> <p>22 A So that -- look how much higher a percentage that is</p> <p>23 than any other crimes and then look in the other</p> <p>24 columns and look at -- look for a difference that</p> <p>25 large and that's pretty uncommon. So that's</p> <p style="text-align: center;">Page 146</p>
<p>1 actually really interesting to me that they come</p> <p>2 back so much more often relative to what is known</p> <p>3 about their recidivism rates, so much of that</p> <p>4 return.</p> <p>5 Q No, but the figures in that column are other people</p> <p>6 returning for that offense and -- right?</p> <p>7 A Yes.</p> <p>8 Q Yeah. And so the same is true, is going to be true</p> <p>9 for every category, right, the drug offenders came</p> <p>10 back at 60 percent compared to all of their</p> <p>11 colleagues who weren't drug offenders to begin with,</p> <p>12 and the property crimes people are way above their</p> <p>13 cohort.</p> <p>14 A Yeah.</p> <p>15 Q And the assault crimes are way above their cohort.</p> <p>16 A Yeah.</p> <p>17 Q And the robberies are way above their cohort. So</p> <p>18 there's nothing particularly distinctive about the</p> <p>19 sexual offenders in terms of --</p> <p>20 A No, no, it becomes very distinctive when we start</p> <p>21 talking about how low the reconviction rates are for</p> <p>22 sexual offending, and I mean it shows what</p> <p>23 Dr. Hanson has proven in his brilliant meta studies,</p> <p>24 which are that, you know, sexual deviants and</p> <p>25 antisociology are related to reoffending of sex</p> <p style="text-align: center;">Page 147</p>	<p>1 offenders and that's just interesting to me.</p> <p>2 Maybe I just got excited about</p> <p>3 something statistically but it's very telling to me</p> <p>4 that this is such an underreported crime but the</p> <p>5 ones that do come back, you know, almost twice as</p> <p>6 much, if not more, than for any other offense is</p> <p>7 going to be another sexual rape or assault. That's</p> <p>8 just very interesting.</p> <p>9 Q But again, with any of these statistics, you have no</p> <p>10 idea whether that's because there's a certain number</p> <p>11 of people with very, very high recidivism rates or</p> <p>12 whether it's spread across the entire population,</p> <p>13 right?</p> <p>14 A I guess I don't understand that question.</p> <p>15 Q You have no way of knowing on the 7.7 percent what</p> <p>16 the distribution is across the entire population on</p> <p>17 any of these?</p> <p>18 A Of what? I'm sorry, sir, I'm trying to follow. The</p> <p>19 distribution? That means something statistically,</p> <p>20 so my head goes to another place maybe.</p> <p>21 Q Well, I think I've made the point that I want to</p> <p>22 make, and that is that it's hard to claim that</p> <p>23 underreporting is the cause of low offense rates --</p> <p>24 or of low recidivism rates when with drugs, which we</p> <p>25 agree has colossal underreporting, the drug</p> <p style="text-align: center;">Page 148</p>

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<p>1 offenders are caught at a 60.4 percent rate and so</p> <p>2 if that's another area of crime that has huge</p> <p>3 underreporting as large as or larger than sex</p> <p>4 offenses, you can't blame underreporting when you</p> <p>5 see return rates of 60.4 percent; is that fair to</p> <p>6 say?</p> <p>7 MR. JAMISON: Objection, that's a</p> <p>8 compound question. It mischaracterizes his prior</p> <p>9 testimony. It assumes facts not in evidence.</p> <p>10 MR. REINGOLD: You can answer.</p> <p>11 A I don't think we have any way to state that that</p> <p>12 amount of underreporting for that offense is the</p> <p>13 same, if not greater, than for rape/sexual assault.</p> <p>14 I don't know where that came from, sir. I have not</p> <p>15 said that once and I've not heard you say that and</p> <p>16 agreed to it once.</p> <p>17 BY MR. REINGOLD:</p> <p>18 Q All right. I will stop sharing and we will move on.</p> <p>19 One of the things that you have talked about a lot</p> <p>20 in addition to the uniqueness of sexual offending in</p> <p>21 terms of underreporting is the difficulty it takes</p> <p>22 to get through the system; isn't that right?</p> <p>23 A Yes, sir, and that's all kind of part and parcel to</p> <p>24 the same thing is disclosing and then who's being</p> <p>25 disclosed to, yes, sir.</p> <p style="text-align: center;">Page 149</p>	<p>1 Q But isn't it true in our system that we</p> <p>2 intentionally have designed our criminal justice</p> <p>3 system to make it hard to convict wrongdoers?</p> <p>4 A That's a really big statement. I don't know -- I'd</p> <p>5 rather not -- I don't feel qualified to testify as</p> <p>6 to that as an expert.</p> <p>7 Q Isn't it true that in our criminal justice system,</p> <p>8 the excused have a right to counsel?</p> <p>9 A Yes.</p> <p>10 Q They can't be made to testify against themselves?</p> <p>11 A Yes.</p> <p>12 Q They have to be told their rights before being</p> <p>13 interrogated?</p> <p>14 A Yes.</p> <p>15 Q They can demand a trial by jury?</p> <p>16 A Yes.</p> <p>17 Q The jury verdict might have to be unanimous?</p> <p>18 A Yes.</p> <p>19 Q And they can only be convicted by proof beyond a</p> <p>20 reasonable doubt?</p> <p>21 A Yes.</p> <p>22 Q And for every category of crime, the kinds of</p> <p>23 barriers to conviction that you talked about are</p> <p>24 present to some degree; isn't that right?</p> <p>25 A Yes.</p> <p style="text-align: center;">Page 150</p>
<p>1 Q If you're a suspect, you may or may not be</p> <p>2 thoroughly investigated?</p> <p>3 A Yes, sir.</p> <p>4 Q If you're investigated and arrested, the arrest may</p> <p>5 not go anywhere?</p> <p>6 A Yes, sir.</p> <p>7 Q Because the burden of proof is so high, even if</p> <p>8 you're referred to the prosecution, the prosecution</p> <p>9 might say we don't think we can win this case and so</p> <p>10 it doesn't go forward?</p> <p>11 A Yes, sir.</p> <p>12 Q And if it does go forward, the jury may not convict,</p> <p>13 you might get acquitted?</p> <p>14 A Right.</p> <p>15 Q So in every category of crime, the number of people</p> <p>16 or the percentage of people who are convicted</p> <p>17 compared to the number of crimes committed and</p> <p>18 especially undetected crimes committed, but for a</p> <p>19 few crimes like murder and bank robbery, there's</p> <p>20 going to be a significant spread between all</p> <p>21 offending and convictions?</p> <p>22 A Yes, sir.</p> <p>23 Q When you talk about underreporting, there aren't</p> <p>24 studies that have changed over time or that show --</p> <p>25 This is Exhibit 5, can be marked as</p> <p style="text-align: center;">Page 151</p>	<p>1 Exhibit 5. This is the Bureau of Justice Statistics</p> <p>2 Special Report Reporting Crime to the Police back in</p> <p>3 2000, now 20 years ago. Am I -- is it correct that</p> <p>4 this study finds robbery was reported to --</p> <p>5 MR. JAMISON: Paul, sorry to</p> <p>6 interrupt. You're not sharing your screen if you</p> <p>7 intended to.</p> <p>8 MR. REINGOLD: Thank you. Thank you.</p> <p>9 Thank you.</p> <p>10 MR. JAMISON: That shows your Zoom</p> <p>11 video.</p> <p>12 MR. REINGOLD: Visible now?</p> <p>13 MR. JAMISON: Yeah.</p> <p>14 BY MR. REINGOLD:</p> <p>15 Q Robbery was reported to the police at percentages</p> <p>16 somewhat higher than rape/sexual assault. 48</p> <p>17 percent for rape/sexual assault. This is from the</p> <p>18 Bureau of Justice Statistics. Do you know anything</p> <p>19 about their operation?</p> <p>20 A Is this the study that Dr. Hanson cited that was not</p> <p>21 subject to peer review?</p> <p>22 Q This is the study -- I don't know the answer to that</p> <p>23 question. I can tell you this is the study that's</p> <p>24 done according to the National Crime Victimization</p> <p>25 Survey, which is probably the most comprehensive</p> <p style="text-align: center;">Page 152</p>

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<p>1 survey of crime annually in the country.</p> <p>2 Every year they don't just do random</p> <p>3 surveys and ask a single question, you know, have</p> <p>4 you had a sexual assault or did you report your</p> <p>5 sexual assault. This is the survey that goes out</p> <p>6 and visits people annually, trained interviewers</p> <p>7 asking them carefully scripted, discrete questions</p> <p>8 and then consolidating the information.</p> <p>9 A I understand all of that but for me to testify about</p> <p>10 something as an expert, whether it is fully</p> <p>11 respectable and appears in the New York Times or</p> <p>12 not, it's got to be -- for it to be part of our --</p> <p>13 you know, what we depend on in our opinions, it</p> <p>14 needs to be peer reviewed. I will be happy to --</p> <p>15 with that caveat, if we can just sort of have that</p> <p>16 as a running caveat, I'm happy to look at the</p> <p>17 results with you and answer your question.</p> <p>18 Q I don't know the answer to that. My guess is it</p> <p>19 can't be peer reviewed because of the kind of study</p> <p>20 that it is, right?</p> <p>21 A I mean USDO -- no, sir, the USDOJ has peer review</p> <p>22 boards for their own research and things like that,</p> <p>23 so it could. Yes, sir, it could. But we can -- I'm</p> <p>24 happy to look at it with you.</p> <p>25 Q All right, let's also look at the one at the top</p> <p style="text-align: center;">Page 153</p>	<p>1 here. It says -- the other question I had is to</p> <p>2 your knowledge, has the level of sexual reporting</p> <p>3 increased over the years?</p> <p>4 MR. JAMISON: I'm going to object to</p> <p>5 the question as vague.</p> <p>6 MR. REINGOLD: You can answer.</p> <p>7 A I think there are a few caveats but for the most</p> <p>8 part, my understanding is yes, in the last couple of</p> <p>9 decades as opposed to previously.</p> <p>10 BY MR. REINGOLD:</p> <p>11 Q All right. Let me ask you a few questions about the</p> <p>12 registry itself. The features to the system that</p> <p>13 we're describing that make discouraging reporting</p> <p>14 hard to get cases processed or convictions won, do</p> <p>15 those have anything to do with the registry?</p> <p>16 MR. JAMISON: Objection, the</p> <p>17 question's vague.</p> <p>18 MR. REINGOLD: You can answer.</p> <p>19 A I don't know. I'm not familiar with the registry</p> <p>20 there. I'm not familiar with registries in general.</p> <p>21 I certainly don't feel comfortable speaking to them</p> <p>22 as an expert. That's not what I was asked to do</p> <p>23 here. That's not what I'm putting myself out there</p> <p>24 as an expert in. So I don't know.</p> <p>25 BY MR. REINGOLD:</p> <p style="text-align: center;">Page 154</p>
<p>1 Q Okay. So it's fair to say you're not an expert on</p> <p>2 registries, your expertise is limited to recidivism</p> <p>3 and underreporting and non-reporting for purposes of</p> <p>4 this case?</p> <p>5 A That's what I was saying. There are other areas in</p> <p>6 which I have been and will testify, but I will just</p> <p>7 say because I don't know exactly -- I can't think</p> <p>8 what I've been designated as but I will say that</p> <p>9 it's not -- I mean my report, I don't think I</p> <p>10 indicate registry even one time.</p> <p>11 Q Okay.</p> <p>12 A I'm not trying to side-step you, sir.</p> <p>13 Q No, no, that's fine. And none of what we've talked</p> <p>14 about today addresses the question of whether or not</p> <p>15 having committed a sexual offense and being</p> <p>16 convicted has an effect on recidivism rates or</p> <p>17 reoffending rates?</p> <p>18 A I think that's exactly what we're saying, if I'm not</p> <p>19 mistaken. I think that's exactly what I've been</p> <p>20 saying but I might have misunderstood you.</p> <p>21 Q What I'm saying is we haven't made any distinction</p> <p>22 between people who were not convicted or have never</p> <p>23 been convicted of a sexual offense in their rates of</p> <p>24 reoffending or offending and people who have been</p> <p>25 convicted of a sexual offense?</p> <p style="text-align: center;">Page 155</p>	<p>1 A If we're talking about recidivating, I would agree</p> <p>2 with that, not reoffending.</p> <p>3 Q Right. We've already established that there's no</p> <p>4 reason to believe that people who have committed a</p> <p>5 prior offense and people who have not should be</p> <p>6 viewed differently as far as recidivating, right?</p> <p>7 A Right, recidivating yes, sir.</p> <p>8 Q Right, okay. And when we try to assess reoffending</p> <p>9 as opposed to recidivating, we go backwards in time</p> <p>10 to look at when people allegedly committed the</p> <p>11 offense, right?</p> <p>12 A Yes, sir.</p> <p>13 Q And whether or not people then committed a sexual</p> <p>14 offense, I think you're saying we don't know whether</p> <p>15 that has an effect or not, whether that has an</p> <p>16 effect or not on their likelihood of reoffending?</p> <p>17 A You're going to shoot me but I need you to start</p> <p>18 that one over for me. I'm sorry.</p> <p>19 Q I may be turning myself into a pretzel here. I</p> <p>20 think we've covered it and so I think we can move</p> <p>21 on.</p> <p>22 A Okay.</p> <p>23 Q Here's what it is that I'm trying to say.</p> <p>24 Dr. Lovell wrote in her report "There's no</p> <p>25 compelling evidence to suggest the percentage of</p> <p style="text-align: center;">Page 156</p>

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<p>1 reported offenses is different between those with no</p> <p>2 previous convictions and those who do have previous</p> <p>3 convictions." Would you agree with that?</p> <p>4 A Did she -- is that from a study? Because if that's</p> <p>5 a finding from a study I'm not familiar with and</p> <p>6 it's intriguing and if it is, then I wouldn't argue</p> <p>7 that that study found that.</p> <p>8 Q It's from her report. That was actually a quote.</p> <p>9 A Can you say it one more time?</p> <p>10 Q Yes. "There's no compelling evidence to suggest the</p> <p>11 percentage of reported offenses is different between</p> <p>12 those with no previous convictions and those who</p> <p>13 do." She has period but she means who do have</p> <p>14 previous convictions. Do you agree with that?</p> <p>15 A I don't know. I'm not familiar with the research</p> <p>16 findings on that specifically. I would look at them</p> <p>17 but I don't know off the top of my head. And I</p> <p>18 don't know -- you know, there's some terminology in</p> <p>19 there. I don't know what she's pulling that from.</p> <p>20 I don't just want to agree to a statement without</p> <p>21 seeing the context. I can pull up her report if you</p> <p>22 want me to or whatever.</p> <p>23 Q All right. All right, I'm going to stop sharing and</p> <p>24 I just have a few more questions. One of the</p> <p>25 criticisms you made of Dr. Hanson's report was that</p> <p style="text-align: center;">Page 157</p>	<p>1 the Static-99R ignores antisocial behavior; is that</p> <p>2 right?</p> <p>3 A I believe I was referring to the fact that it</p> <p>4 ignored antisocial personality traits persuasion as</p> <p>5 a risk factor, which I'm reading directly from</p> <p>6 Dr. Hanson's own research, that it's one of the big</p> <p>7 two predictive risk factors.</p> <p>8 Q But isn't it true that two of the ten items directly</p> <p>9 address antisocial behavior, one being prior</p> <p>10 non-sexual violence and the other prior sentencing</p> <p>11 dates for anything?</p> <p>12 A Yes, sir, it does. I was referring to the fact that</p> <p>13 I don't think that it's inclusive enough although</p> <p>14 I'm aware that it's a factor analysis and that will</p> <p>15 be their rebuttal. But yes, I agree with what</p> <p>16 you're saying.</p> <p>17 Q And there are three other items that are also</p> <p>18 strongly related to the general propensity for rule</p> <p>19 violation, young age, never lived with a lover for</p> <p>20 two years and victimized a stranger.</p> <p>21 A I think you can make an argument that every item</p> <p>22 could get at antisociology in some way just because</p> <p>23 it's related to them having committed a sexual</p> <p>24 offense, but I think that -- I think there was a</p> <p>25 point I'm making in the paper is that these two big</p> <p style="text-align: center;">Page 158</p>
<p>1 risk factors that we know from Dr. Hanson's</p> <p>2 research, and we're all thankful for it, that we</p> <p>3 know to be predictive, especially in conjunction,</p> <p>4 and that that is missing, and my whole argument is</p> <p>5 that I think people are just taking the Static and</p> <p>6 misrepresenting it and misusing it and that as much</p> <p>7 as I respect Dr. Hanson, I feel that his own</p> <p>8 language is contributing to that and it might be --</p> <p>9 Q You said that a number of times. I don't think you</p> <p>10 need to say it again, not in response to a question.</p> <p>11 But again, what we've got is an actuarial</p> <p>12 instrument, right?</p> <p>13 A Yes.</p> <p>14 Q And presumably the factors that were chosen were the</p> <p>15 ten that had the most traction when it comes to</p> <p>16 predicting future sexual recidivism?</p> <p>17 A Right.</p> <p>18 Q Doesn't mean you couldn't have had a 12-factor test,</p> <p>19 right?</p> <p>20 A No, sir, that was what I said about the factor</p> <p>21 analysis. Yes, sir, I agree completely.</p> <p>22 Q In paragraph 65, you also were critical of the</p> <p>23 report because you said it hadn't -- that there</p> <p>24 hadn't been sufficient cross-validation and</p> <p>25 independent studies or any peer review -- or any</p> <p style="text-align: center;">Page 159</p>	<p>1 peer-reviewed publications and for that you cited</p> <p>2 Cauley, right?</p> <p>3 A I need to see what you're talking about. Can you</p> <p>4 share your screen or would you like me to pull mine</p> <p>5 up?</p> <p>6 Q Yeah, pull yours up if you can. That was on the</p> <p>7 last page, page 9.</p> <p>8 A Do I get credit for having the coat on today? It's</p> <p>9 getting a little hot. I'm in Louisiana.</p> <p>10 Ms. Darnbrook, are you all right with that?</p> <p>11 COURT REPORTER: I'm fine with that.</p> <p>12 Q It's paragraph sixty -- let's see, it was page 9,</p> <p>13 which is the last page, and the cite is in</p> <p>14 footnote -- or the second to the last page. Sorry,</p> <p>15 it is on page 9, sorry.</p> <p>16 A Okay. Okay, and where on page 9?</p> <p>17 Q The footnote is footnote 18, which is actually from</p> <p>18 the previous page, you're right.</p> <p>19 A Okay. Okay, yes, sir, I see it.</p> <p>20 Q And the criticism, as I said, was that the Static-99</p> <p>21 should not be used because, among other things, it</p> <p>22 does not have the supportive cross-validation,</p> <p>23 independent studies or any peer-reviewed</p> <p>24 publications. That's not your statement, that's</p> <p>25 what Cauley argued.</p> <p style="text-align: center;">Page 160</p>

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<p>1 A Oh. Okay.</p> <p>2 Q Right?</p> <p>3 A Sorry.</p> <p>4 Q Sorry, didn't mean to be --</p> <p>5 A That saves us a lot of time.</p> <p>6 Q Didn't mean to be confusing. Isn't it true that</p> <p>7 Cauley titled his article The Death of Static-99</p> <p>8 because he thought it was going to disappear?</p> <p>9 A I don't know.</p> <p>10 Q Isn't it true that recent articles that identified</p> <p>11 56 Static-99 validation studies, this is from a '22</p> <p>12 study by Helmus, they basically went back and looked</p> <p>13 at all the studies that had done validation studies</p> <p>14 of the Static-99 and found that the average</p> <p>15 predictive accuracy was similar to what it had been</p> <p>16 in the developmental samples and that there were no</p> <p>17 statistically difference -- significant differences</p> <p>18 for the Static-99s between the developers' figures</p> <p>19 and the independent authors' 46 studies?</p> <p>20 A I can pull up the Cauley study but I will say that I</p> <p>21 disagree with the statement that the Static-99 has</p> <p>22 not been, you know, revalidated, it has. I've said</p> <p>23 that numerous times. So I agree with everything</p> <p>24 that you just said without pulling up the Cauley</p> <p>25 article. Yeah, unless that was taken out of</p> <p style="text-align: center;">Page 161</p>	<p>1 context, I don't think anyone would agree that the</p> <p>2 Static-99 is not one of the most researched, if not</p> <p>3 the most researched, actuarial in sexual offending</p> <p>4 that there is.</p> <p>5 Q The last thing I want to ask about is cost. When</p> <p>6 you're doing evaluations and Static-99s, if you're</p> <p>7 using them, a lot of those that you've done were for</p> <p>8 people in civil commitment cases, right?</p> <p>9 A Yes.</p> <p>10 Q And there what's at stake is probably a lifetime of</p> <p>11 custody or at least a very long time of custody?</p> <p>12 A Yes.</p> <p>13 Q And in the criminal cases when you're doing</p> <p>14 individual evaluations, the same thing is true, if</p> <p>15 someone's found guilty, they might be going away for</p> <p>16 ten, 20, 30 years, right?</p> <p>17 A Right.</p> <p>18 Q When we're doing evaluations to try to determine</p> <p>19 whether or not a person who's on the registry</p> <p>20 remains dangerous or how far it might take someone</p> <p>21 who's been out and on the registry to reach what</p> <p>22 Hanson calls desistance, we don't need the same</p> <p>23 level of evaluation, do we?</p> <p>24 MR. JAMISON: Objection, lack of</p> <p>25 foundation.</p> <p style="text-align: center;">Page 162</p>
<p>1 A Can you repeat that, please?</p> <p>2 BY MR. REINGOLD:</p> <p>3 Q Yeah. I said when you were doing those studies,</p> <p>4 those evaluations, which might have included a</p> <p>5 Static-99, the stakes were incredibly high for the</p> <p>6 people whom you were evaluating, right?</p> <p>7 A Yes.</p> <p>8 Q And in one case at least, the State had to approve</p> <p>9 its case beyond a reasonable doubt and so you needed</p> <p>10 everything in your arsenal to meet the proofs if you</p> <p>11 were the prosecution?</p> <p>12 A Okay, yes.</p> <p>13 Q And conversely, if you were representing the</p> <p>14 defense, you needed everything in your arsenal to</p> <p>15 try to sow reasonable doubt in the jury's mind?</p> <p>16 A Yes.</p> <p>17 Q But when we're talking about trying to figure out</p> <p>18 who should stay on a registry or who deserves to be</p> <p>19 placed on a registry, especially who should stay,</p> <p>20 it's a different kind of story, isn't it?</p> <p>21 MR. JAMISON: Objection, that's</p> <p>22 vague.</p> <p>23 BY MR. REINGOLD:</p> <p>24 Q Let's put it a different way. The stakes are not as</p> <p>25 high?</p> <p style="text-align: center;">Page 163</p>	<p>1 MR. JAMISON: Same objection.</p> <p>2 A You know, I'm just being real careful. I think</p> <p>3 we're getting at the crux of this case.</p> <p>4 BY MR. REINGOLD:</p> <p>5 Q Let me withdraw that.</p> <p>6 A It's not even the case but my own --</p> <p>7 Q I'm going to withdraw the question. Let me ask it a</p> <p>8 separate way. When you were doing the treatment or</p> <p>9 supervising treatment of people who had been</p> <p>10 released from prison into the community, you said</p> <p>11 you didn't do the -- you or your sidekick didn't do</p> <p>12 the Static 99s because they were done by the</p> <p>13 Department of Corrections before release, right?</p> <p>14 A Yes, sir.</p> <p>15 Q And those were being done either in-house by DOC</p> <p>16 folks --</p> <p>17 A Right.</p> <p>18 Q -- or they might be done on a contract basis via an</p> <p>19 outsider, right?</p> <p>20 A Sure. Who knows?</p> <p>21 Q In fact, we learned the same thing about Michigan</p> <p>22 Department of Corrections. We deposed some of their</p> <p>23 people and it turns out almost all sex offenders at</p> <p>24 least who are eligible get a Static-99 on the way</p> <p>25 in. Does that surprise you?</p> <p style="text-align: center;">Page 164</p>

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<p>1 A No, sir, it's used everywhere.</p> <p>2 Q It's used everywhere, it's routine. And then again,</p> <p>3 they get a Static-99 on their way out because that's</p> <p>4 when you can begin calculating the time free in the</p> <p>5 community and you change the age factor, right?</p> <p>6 A Yes, sir.</p> <p>7 Q And those were done internally by a small group of</p> <p>8 people who could do them at very high speed because</p> <p>9 most of it's based on static information and in fact</p> <p>10 they estimated that some of them would be done in as</p> <p>11 short a time as 15 minutes?</p> <p>12 A Yes, sir.</p> <p>13 Q And that was true in your experience as well in</p> <p>14 Louisiana?</p> <p>15 A That's what I was about to say. I'm not confirming</p> <p>16 what you're referring to but that is my experience,</p> <p>17 yes, sir.</p> <p>18 Q Okay. And so to get a report and even a Static-99</p> <p>19 and a STABL, it not as if it takes hours and hours</p> <p>20 and hours and ten or \$20,000 to do it if what you</p> <p>21 want to know is what treatment does this person need</p> <p>22 on probation -- or not on probation, on parole, or</p> <p>23 what treatment does this person need given that</p> <p>24 they're going to be on the registry, that sort of</p> <p>25 thing, you don't need the mega evaluation?</p> <p style="text-align: center;">Page 165</p>	<p>1 MR. JAMISON: Objection, it's a</p> <p>2 compound question. I think there was three</p> <p>3 questions in one there.</p> <p>4 BY MR. REINGOLD:</p> <p>5 Q All right, we'll take them one at a time. You don't</p> <p>6 need a mega evaluation to get the answer that you</p> <p>7 need?</p> <p>8 A I have to fundamentally disagree with that. How can</p> <p>9 you compromise the totality of an evaluation for</p> <p>10 speed and money and resources?</p> <p>11 Q But you did it every day when you were supervising</p> <p>12 people and treating people for the MDOC, you relied</p> <p>13 on the -- isn't that true?</p> <p>14 A I don't know what you're -- what are you talking</p> <p>15 about?</p> <p>16 Q When you were working on contract --</p> <p>17 A The MDOC, I don't know what --</p> <p>18 Q Or for defense.</p> <p>19 A Okay.</p> <p>20 Q People were coming out on parole.</p> <p>21 A Are you talking about the contract that I have for</p> <p>22 treatment now?</p> <p>23 Q I'm talking about any time in which you've been</p> <p>24 treating people coming out of prison into the</p> <p>25 community on parole.</p> <p style="text-align: center;">Page 166</p>
<p>1 A Okay.</p> <p>2 Q In that situation, it's true that at the front end,</p> <p>3 people get a Static-99 that's done in very short</p> <p>4 order at very low cost; is that true?</p> <p>5 A Very frequently, yes, sir.</p> <p>6 Q And the same on the back end, when they're coming</p> <p>7 out, it's either done by DOC people or contract</p> <p>8 people who at relatively low pay are doing the</p> <p>9 Static-99 and scoring it?</p> <p>10 A I would agree.</p> <p>11 Q And you're then treating them in part based on the</p> <p>12 information that the Static-99 or the Static-99 and</p> <p>13 the STABL provides?</p> <p>14 A Well, no. But to be fair, most people would say</p> <p>15 yes, because most people rely on that, but I am not</p> <p>16 one of those because I don't think that the</p> <p>17 Static-99 has much of a purpose there. So I don't</p> <p>18 really care what the Static-99 says in those</p> <p>19 situations. I'm treating them based on their sexual</p> <p>20 deviance, substance abuse issues, antisociality,</p> <p>21 which are all things identified by Hanson but I</p> <p>22 don't care -- I mean the Static-99 score has so</p> <p>23 little to do with my treatment. I decide based on</p> <p>24 supervision how long these guys stay on. I mean I</p> <p>25 don't want to run away with your question but...</p> <p style="text-align: center;">Page 167</p>	<p>1 Q So your conclusion is that the Static-99 provides no</p> <p>2 useful information or almost no useful information</p> <p>3 to you and you effectively are willing to ignore the</p> <p>4 score?</p> <p>5 MR. JAMISON: Objection,</p> <p>6 mischaracterized his testimony.</p> <p>7 A Yeah, that's not what I said.</p> <p>8 BY MR. REINGOLD:</p> <p>9 Q Well, you said you don't pay any attention to it.</p> <p>10 A I don't know if I said I don't pay any attention. I</p> <p>11 don't even think I said that. I just said that I'm</p> <p>12 going to provide a service based on a different</p> <p>13 assessment than a Static score and that a lot of my</p> <p>14 assessment is going to be based on empirically</p> <p>15 supported Static instruments but I'm trying to</p> <p>16 prevent reoffending, not reconviction and I think</p> <p>17 that Static looks at reconviction but says it looks</p> <p>18 at reoffending when really it only looks at</p> <p>19 reconviction.</p> <p>20 Q But what I'm saying is to do your treatment and to</p> <p>21 have this person safely out in society, you don't</p> <p>22 need and you don't get a five or ten or \$15,000</p> <p>23 evaluation of that person?</p> <p>24 A No, but wouldn't it be great if I did? It would</p> <p>25 solve --</p> <p style="text-align: center;">Page 168</p>

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<p>1 Q Of course it would be.</p> <p>2 A Save money for the people that are paying me to have</p> <p>3 to figure that out myself.</p> <p>4 Q Of course it would be but you're able to provide the</p> <p>5 treatment without a five or ten or \$15,000</p> <p>6 evaluation?</p> <p>7 A Sure, I do the best I can with what I have, yes,</p> <p>8 sir.</p> <p>9 Q Exactly.</p> <p>10 MR. REINGOLD: All right, I think</p> <p>11 we'll call it a day there for me.</p> <p>12 ---</p> <p>13 DIRECT EXAMINATION</p> <p>14 BY MR. JAMISON:</p> <p>15 Q Okay, I just have a couple questions. So I'll ask</p> <p>16 you a few questions. I'm going to use the term sex</p> <p>17 offender and my definition of a sex offender is</p> <p>18 someone who has been convicted of criminal sexual</p> <p>19 conduct. Is that okay?</p> <p>20 A Yes, sir.</p> <p>21 Q All right. How many sex offenders would you say</p> <p>22 that you've worked with in a clinical setting?</p> <p>23 A This includes my forensic work?</p> <p>24 Q Yeah.</p> <p>25 A Thousands.</p> <p style="text-align: center;">Page 169</p>	<p>1 Q Okay. In your experience, do sex offenders only</p> <p>2 commit one offense?</p> <p>3 A No, sir, not statistically most of the time, no.</p> <p>4 Q In your experience, do sex offenders stop committing</p> <p>5 sex offenses after being convicted?</p> <p>6 A No, sir.</p> <p>7 Q Do sex offenders -- do all sex offenders commit</p> <p>8 other offenses after being convicted?</p> <p>9 A No, sir.</p> <p>10 Q So in your experience, what causes sex offenders to</p> <p>11 commit another offense?</p> <p>12 MR. REINGOLD: Objection as to form</p> <p>13 and foundation.</p> <p>14 A I think it's a combination of antisociality and</p> <p>15 psychopathy that allows them to feel entitled and</p> <p>16 okay with acting on sexually deviant urges and</p> <p>17 sexual deviance, which is the other main risk</p> <p>18 factor.</p> <p>19 I think we also know, thanks to</p> <p>20 Dr. Hanson, that things like intoxication at the</p> <p>21 time of an offense, early behavioral sexual</p> <p>22 problems, emotional identification with children and</p> <p>23 other things really contribute and really factor in</p> <p>24 but I think that those are the main ones.</p> <p>25 Q So those main ones you identified, do those go away</p> <p style="text-align: center;">Page 170</p>
<p>1 with time?</p> <p>2 A No, sir, because primarily they're represented by</p> <p>3 antisociality and sexual deviance, both of which are</p> <p>4 chronic conditions, speaking clinically. So</p> <p>5 something like a paraphilic diagnosis, pedophilia,</p> <p>6 sadism, for example, is going to be a chronic</p> <p>7 lifelong condition as is antisociality or</p> <p>8 psychopathy even though there's some evidence that</p> <p>9 they age out across that.</p> <p>10 Q So earlier you were asked a series of questions</p> <p>11 about life insurance. Do you remember that line of</p> <p>12 questioning?</p> <p>13 A Yes, sir.</p> <p>14 Q And I think we -- or it was covered that smokers pay</p> <p>15 a higher rate for life insurance. Do you remember</p> <p>16 that?</p> <p>17 A Yes, sir.</p> <p>18 Q In that circumstance, a life insurance company</p> <p>19 relies on self-reporting. Does that sound accurate</p> <p>20 to you?</p> <p>21 A Yes, sir.</p> <p>22 Q So life insurance companies when they're rating</p> <p>23 potential insureds, they don't actually know if</p> <p>24 someone smokes, correct?</p> <p>25 A Right. Correct.</p> <p style="text-align: center;">Page 171</p>	<p>1 Q So their rates of insurance could be off based on</p> <p>2 whether someone is being truthful with the life</p> <p>3 insurance company?</p> <p>4 A Yes, sir.</p> <p>5 Q And then have you seen or have you heard of car</p> <p>6 insurance companies that they'll offer you a lower</p> <p>7 rate if they can put an app. on your phone that</p> <p>8 tracks your driving habits?</p> <p>9 A I've not. I'm not surprised but I've not heard of</p> <p>10 that.</p> <p>11 Q Is there any app. that you're aware that can track</p> <p>12 criminal sexual conduct?</p> <p>13 A No, sir.</p> <p>14 Q And there was also a line of questioning relating to</p> <p>15 drug crimes. In drug crimes, who's the victim?</p> <p>16 A I think there are collateral victims. Certainly</p> <p>17 children, society in general. I guess --</p> <p>18 Q I guess in terms of the conviction, if we're looking</p> <p>19 at convictions for drug crimes, is there a victim in</p> <p>20 a drug crime?</p> <p>21 A That's a tough one. That's one that in 12 years</p> <p>22 people are going to tell me what I said when you</p> <p>23 asked me that.</p> <p>24 Q Let me rephrase it a little bit. So in a murder, is</p> <p>25 there a victim in the traditional sense?</p> <p style="text-align: center;">Page 172</p>

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<p>1 A Yes.</p> <p>2 Q In a robbery, is there a victim in the traditional</p> <p>3 sense?</p> <p>4 A Yes.</p> <p>5 Q In a property crime theft, something like that, is</p> <p>6 there a victim in the traditional sense?</p> <p>7 A Yes, sir.</p> <p>8 Q In a drug crime, is there a victim in the</p> <p>9 traditional sense like the previous three crimes I</p> <p>10 mentioned?</p> <p>11 A No, sir. I think some people may consider the</p> <p>12 person with the addiction to be the victim.</p> <p>13 Q Absolutely.</p> <p>14 A But they're still making a choice to engage in that</p> <p>15 behavior. I see that point, yes, sir.</p> <p>16 Q And with criminal sexual conduct, is there a</p> <p>17 victim?</p> <p>18 A Yes.</p> <p>19 MR. JAMISON: That's all I have.</p> <p>20 MR. REINGOLD: I have no further</p> <p>21 questions.</p> <p>22 MR. JAMISON: All right. I think</p> <p>23 you're all set. Thanks, Dr. Turner.</p> <p>24 COURT REPORTER: I just need the</p> <p>25 transcript orders, please.</p> <p>Page 173</p>	<p>1 MR. REINGOLD: Yes. Go ahead, Eric.</p> <p>2 MR. JAMISON: Yeah, I just need a</p> <p>3 searchable PDF.</p> <p>4 MR. REINGOLD: For us, we like to get</p> <p>5 more than Eric does. We like to get a mini and a</p> <p>6 full size. I like having the PTX because sometimes</p> <p>7 it's useful in ways that the others aren't, and my</p> <p>8 colleagues and I like to get a Word version if we</p> <p>9 can because that way it's easier to cut and paste</p> <p>10 directly into briefs without any transfer errors.</p> <p>11 ---</p> <p>12 (Deposition was concluded at 3:20 p.m.).</p> <p>13 ---</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>Page 174</p>
<p>1 STATE OF MICHIGAN)</p> <p>2) SS.</p> <p>3 COUNTY OF OAKLAND)</p> <p>4 CERTIFICATE OF NOTARY PUBLIC</p> <p>5 I, Robin V. Darnbrook,</p> <p>6 Certified Shorthand Reporter, Notary Public,</p> <p>7 Oakland County, Michigan, certify the witness</p> <p>8 whose deposition was taken before me on</p> <p>9 June 7, 2023 was by me cautioned and</p> <p>10 sworn to testify the truth, that the testimony</p> <p>11 contained in the deposition was recorded by means</p> <p>12 of stenography, was reduced to a typewritten form</p> <p>13 and is a true and correct transcript.</p> <p>14 I further certify I am not</p> <p>15 connected by blood or marriage to any of the</p> <p>16 parties, their agents or attorneys; that I am</p> <p>17 not an employee of any of them, nor interested</p> <p>18 directly or indirectly in the matter in</p> <p>19 controversy.</p> <p>20 IN WITNESS WHEREOF, I have</p> <p>21 hereunto set my hand and affixed my notarial</p> <p>22 seal in the County of Oakland, State of</p> <p>23 Michigan, this 21st day of June, 2023.</p> <p>24 </p> <p>25 Robin V. Darnbrook - CSR2508 Notary Public, Oakland County, MI My Commission Expires 11/19/2024</p> <p>Page 175</p>	

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